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CURRENT TOPICS

The Law Society's Annual Report

THE Annual Report for 1949–50 of the Council of The Law Society, to be presented to the general meeting of members on 7th July next, again reveals a full and valuable year's work for the profession. Its 83 pages contain an impressive picture of the manifold activities of the Council and its committees, and the appendices, reproducing memoranda submitted by the Council to the Supreme Court Committee on Practice and Procedure, the Departmental Committee on Local Land Charges, the Departmental Committee on Taxation of Trading Profits, and the Departmental Committee on Inland Revenue Organisation, are stimulating and instructive. It is recorded that during the year membership of the Society again reached a new record, standing on 31st May, 1950, at 14,888 as against 14,015 a year previously—an increase due largely, it is said, to the continued efforts of the provincial law societies. Among the most interesting matters dealt with in the report is the enforcement of minimum conveyancing charges; the Council state that amendments to r. 2 of the Solicitors' Practice Rules, 1936, have been drafted with a view to shifting the onus of proof on to the solicitor in a case of undercutting and to give the Council power to inspect a solicitor's books to ascertain whether there have been breaches of the rule. The amendments have been provisionally agreed by the Master of the Rolls and have received the general approval of the presidents and secretaries of provincial law societies at their meeting on 27th April this year, and the Council, it is stated, intend to publish the proposals in the Society's *Gazette* in order to discover the views of solicitors generally.

Judges and the Separation of Powers

THE emergence in modern times of the totalitarian form of government has brought home to the majority of people the truth of the principle, formulated by Dicey, that the separation of the executive and the judicial functions in government is an important safeguard of freedom. The theme of the separation of functions was amplified by Lord Justice DENNING, at the annual dinner of the Holdsworth Club of the Faculty of Law of Birmingham University on 16th June. From what he said it is clear that he does not consider the English system to be entirely free from its peculiar problems, although confident that it strengthens freedom. For instance, he stated that at one time theorists had said that there should be a complete separation between the legislature, the executive, and judicial powers, but that theory had never been carried to its logical extent. The executive was subject to checks both by the legislature and by the judiciary. He added that he did not see why responsible comments or suggestions by judges, intended solely in the public interest, should be regarded as an infringement of the sovereignty of Parliament, but judges must never comment disparagingly on the policy of Parliament, as that would be inconsistent with the confidence and respect that should subsist between Parliament and the judges. Parliament was

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not infallible: its enactments might not work out in practice in the way it had intended, and its draftsmanship might be obscure and give rise to unexpected difficulties. When that happened, the judges had the right and the duty to point it out. The address is to be published as a pamphlet, and it deserves a wide circulation.

Drawing of Instruments by Accountants

AT Bradford City Magistrates' Court, on 13th June, an accountant, JAMES EDWARD HARTLEY, was fined £44 5s. with £26 5s. costs for drawing an agreement under seal for the purpose of converting a partnership into a limited company. He had charged £24 5s. for the work. For the defence and in mitigation on a plea of guilty, it was pointed out that if a seal had not been attached no prosecution could have been brought, that it was a "trivial technicality," and that the defendant had not charged more than a solicitor would have done. Prosecuting for The Law Society, Mr. J. STANLEY SNOWDEN pointed out that as a result of the defendant having drawn the agreement, the parties might be put to the expense of High Court litigation. The stipendiary magistrate, Dr. CODDINGTON, said that the defendant was an accountant of good reputation in Bradford and had practised for many years. There could be no suggestion that he had done an illegal thing through any kind of sheer stupidity or inadvertence. We feel that it is necessary to state that it is a complete error to describe either the rule or any offence against it as either trivial or a technicality. Whether more or less than a solicitor's fee is charged is quite irrelevant. The fact remains that for others to charge for this class of work is an illegal encroachment on work which, for the best of reasons, was allocated to solicitors exclusively.

Courts (Emergency Powers) Act, 1943

IT was recently stated in Parliament that an Order in Council terminating the emergency for the purposes of this Act would be submitted to His Majesty towards the end of June (see *ante*, p. 355). The Lord Chancellor's Office has now announced that as a result of unforeseen circumstances, it is necessary that the Liabilities (War-Time Adjustment) Act, 1944, the duration of which is linked with that of the Courts (Emergency Powers) Act, should remain in force for a short time longer. The Order in Council terminating the emergency will therefore not be made until September.

Income Tax Relief in Personal Accident Policies

A STATEMENT on 14th June by the Board of Inland Revenue announces that commencing with the income tax year 1951–52, relief will be allowed only on so much of the premium paid for a personal accident policy as is shown to be attributable to the death risk. For the purpose of P.A.Y.E. coding notices for 1951–52, which will have to be prepared and issued before the 6th April, 1951, the portion allowable will be estimated, on the basis of existing claims, at the rate of £1 per £1,000 assured on death.

Abuse of Process

SINCE the House of Lords by a majority, in *Hill* v. *Wm. Hill, Ltd.* (1949), 93 SOL. J. 587, overruled the long-standing decision of *Hyams* v. *Stuart-King*, the lot of the bookmaker-litigant has become appreciably harder. *Law* v. *Dearnley* (1950), 94 SOL. J. 96, emphasised with the authority of the Court of Appeal that an action on an account stated will not be entertained where the account is in respect of betting transactions; nor, it seems, can a bookmaker improve his position by relying on a covenant contained in a charge executed by an unlucky backer (*William Hill, Ltd.* v. *Hofman* [1950] 1 All E.R. 1013). Now comes the further discouragement of a warning issued by the LORD CHIEF JUSTICE in the course of his evidence before the Royal Commission on Betting, Lotteries and Gaming to the effect that if another case came before him of a writ for a betting debt endorsed for an account stated, he intended to have the question investigated whether or not it was contempt of court. The court has indeed not been slow in the past to punish the more obvious abuses of its process when these have come to light, visiting its displeasure as well on counsel and solicitors as on the litigants themselves. The gambling fraternity must not take us unkindly if we remind readers of what is surely the most colourful of these cases—*Everet* v. *Williams* (1725), which (though no doubt fully treated by the popular journalists of the time) was at first regarded in the law books as fabulous. Bacon, V.C., in *Ashurst* v. *Mason* (1875), L.R. 20 Eq., at p. 230, referred to it as "legendary." Nevertheless later research has established it as a precedent and it ranks for mention in Lindley on Partnership (10th ed., p. 117) and Pollock on Contract (12th ed., p. 256). The action was between highwaymen for an account of the plaintiff's share of the plunder. Fatal results seem to have ensued for both the parties; counsel had to pay costs; a solicitor was fined and apparently turned to robbery on his own account a few years later. Properly conducted betting is not, of course, criminal, but the stage is evidently approaching when the courts may be expected to express more forcefully than hitherto the disfavour with which, even before the Gaming Act of 1835, they viewed actions arising out of wagers.

Counsel and Witnesses

THE division of functions between barrister and solicitor in litigation results in their respective problems of etiquette being divergent. Solicitors, because they have no similar rule, are sometimes surprised to learn that members of the bar are not generally permitted to interview witnesses other than parties and expert witnesses before the trial of an action. The rule is that counsel must exercise his discretion and judgment in deciding whether the emergency is so urgent as to override the general practice. A case on 16th June, in which the Bench of the Inner Temple unanimously exonerated a barrister who had brought the matter before them after a Divorce Commissioner had publicly accused him of unprofessional conduct, attracted the attention of the Press, and many readers must have been mystified by the reference to a rule of etiquette which, though not rigid, seems at first sight more formal than reasonable. There is, however, a reason why, except in an emergency, counsel may not interview witnesses other than experts and parties. If a contradiction appears between what a witness said to counsel before the hearing and what he says in the box, it is considered that the possibility of an undignified altercation between counsel and a witness is sufficient to necessitate the rule. After all, it is the function of solicitors to take witnesses' proofs. There are, of course, emergencies, where, for example, a witness is brought forward only a few minutes before a trial, and the solicitor, through no fault of his own, has had and will have no time to take a proof before counsel needs it. Apart from etiquette, the moral of the whole business seems to be that the bench should refrain from criticising the bar except where on the whole of the facts it is manifest that professional misconduct has been committed.

Juvenile Crime

A RECENT attack on the juvenile courts by a High Court judge has given rise to a controversy which may yet have far-reaching results. Mr. W. A. HALLAS, principal probation officer for Bradford, in his recent annual report, said that the criticism of the juvenile courts was not always with justification or with accurate knowledge. He continued: "This is all the more unfortunate when it comes from persons of eminence who ought to know better." He wrote that the Bradford Juvenile Court attempted to bring home to the youngsters and parents the realisation of why they were there. Parents were often blamed for the crimes of their children, and where this was considered to be the case, parents had been requested to enter into a money surety for the good behaviour of the children. Where this was done last year, not one of the youngsters so dealt with was again before the court. On the other hand, Mr. A. F. STAPLETON COTTON, of Epsom, in his presidential address to the annual meeting on 15th June of the Justices' Clerks Society, at Leamington, gave as reasons for more juvenile crime the too frequent binding over of juveniles and the failure to make parents contribute to the cost of a young person's maintenance in an approved home. "No one who sits frequently in a juvenile court," he added, "can fail to be concerned at the number of children who appear there and at their apparent lack of realisation of the seriousness of their conduct." This division of opinion on a matter of vital public concern should be resolved by an impartial inquiry, with special reference to the part which parents ought to be made to play in the re-education of their errant offspring.

Recent Decisions

In *Warren* v. *Railway Executive*, on 13th June (*The Times*, 14th June), FINNEMORE, J., held that a railway passenger who, with other passengers, entered an unlighted train which had halted at a platform in a railway station and, in attempting to sit down, fell heavily in the doorway of a lavatory in the compartment which she had entered, and was injured, was entitled to damages from the Railway Executive because there was an unusual danger in that the space which she expected to be occupied by a seat was taken up by a lavatory door and the compartment was in darkness. The Railway Executive had failed in their duty to give warning of the danger or to see that it did not injure the plaintiff.

In *Miness* v. *Gillard*, on 14th June (*The Times*, 15th June), a Divisional Court (the LORD CHIEF JUSTICE, and FINNEMORE and PARKER, JJ.), in an appeal by a prosecutor from the dismissal of an information for failing to conform with a traffic sign "Halt at Major Road Ahead," stated that the case called attention to the obscure and unsatisfactory position in which traffic-sign authorisations and rules and regulations were. In order to ascertain whether the sign, which had a triangle pointing downwards instead of upwards, was authorised, they had not only to obtain the authorisation, which was very difficult, but to obtain a volume costing no less than 2s. 6d., containing the report of a departmental committee. The Attorney-General had stated that regulations would shortly be laid before Parliament which would clearly authorise such a sign as that in question, and in the circumstances he had advised that the order of the justices dismissing the information should not be challenged further. The dismissal of the information by the justices was accordingly affirmed.

In *Rose* v. *Rose*, on 16th June (p. 404 of this issue), the Court of Appeal (BUCKNILL, SOMERVELL and DENNING, L.JJ.) held that *prima facie* where, during the married life, the means of a husband were such that his wife had not been required to go out and earn, it would seem wrong that the husband should be able to say to her that she must now go out and earn, and that he could only pay her a sum based on her doing so, he having been guilty of adultery and having thereby broken up the married home. No general rule could be laid down and in the case of a young woman with no child, who should go out to work in her own interests, her potential earning capacity should be taken into account.

Taxation

MARRIED PERSONS' INCOME TAX: FINANCE BILL, 1950

THE basis of income tax law relating to husband and wife has remained substantially unchanged since 1842, and it has long been the subject of comment that husband and wife living together are sometimes taxed more heavily than if they were single individuals. That situation still obtains, though alleviated in some ways in recent years, particularly in cases where the wife has earned income. The Finance Bill, 1950, does not attempt any general overhaul of the law in this respect, but replaces some of the more obscure statutory language and, while leaving basic principles more or less unchanged, makes a number of alterations in detail.

An important change proposed by the Bill is to give the Revenue power, in the case of married persons living together who have not elected to be separately assessed, to recover from the wife or her personal representatives the tax appropriate to her income. Until now a wife not separately assessed has not been personally liable for tax on her income, with the result that, in the case of a husband with no financial resources, the Revenue might find themselves without remedy beyond that of making the husband bankrupt and of committing him to prison. Now, however, by cl. 26 of the Bill, if the husband fails within twenty-eight days of the due date to pay the whole or any part of the tax due from him, the Revenue may recover from the wife or her executors so much of the unpaid tax as is attributable to her income. The power to recover tax from the wife is retrospective to years prior to the present tax year. If they call on the wife to pay, the husband is released from direct responsibility for payment, though he still remains liable, in the event of his wife's default, to a distress under s. 171 of the Income Tax Act, 1918. The Revenue are not obliged to adopt the course of holding the wife liable, and if it is easier to recover from the husband it may be that they will look to him for payment. It is to be regretted that the proposed change in the law seems to be directed only to protecting the Revenue and not to securing a just incidence of taxation as between husband and wife.

The position where either spouse has elected to be separately assessed is not substantially changed. General Rule 17 of the Income Tax Act, 1918, still applies, whereby the spouses, if either of them elects for separate assessment, are respectively responsible for the payment of their own share of the tax on the joint income. The total amount of tax payable is not reduced by an election for separate assessment and, if the wife

defaults in paying her tax, the amount can be recovered from the husband by distress. A new method of computing the allocation of the tax between husband and wife is contained in cl. 25 of the Bill, in place of s. 25 of the Finance Act, 1920, but the changes are of little significance.

General Rule 16 of the Income Tax Act, 1918, is to be repealed by the Bill. That rule, the interpretation of which gave the House of Lords great difficulty in *Nugent-Head* v. *Jacob* [1948] A.C. 321, provided in effect that the income of a married woman living with her husband should be assessed as income of her husband, and that a married woman living apart from her husband should be assessed as though she were unmarried. The rule contained no definition of "living together," but the House of Lords, in *Nugent-Head's* case, decided that married people were living together for tax purposes if there had been no rupture of marital relations, even if they were geographically separated. Rule 16 is to be replaced by cl. 24 of the Bill, which puts into clearer language the general purport of the rule, but the meaning of "living together" is now to be statutorily defined. Clause 27 (1) states that a married woman is to be treated for income tax purposes as living with her husband unless they are separated by court order or deed of separation, or are in fact separated in such circumstances that the separation is likely to be permanent.

The only provision in the Bill relating to married persons which is likely to affect the amount of tax chargeable is that relating to overseas residence. By cl. 27 (2) husband and wife who are not to be regarded as living apart in the sense above defined, but who are nevertheless geographically separated, one being resident in the United Kingdom and the other abroad, are to be assessed as single individuals. This may result in a saving of tax, and in any event they are not together to be charged more tax than would have been payable if they had been assessed as living together. If a wife resident in the United Kingdom has foreign income it will not escape assessment merely because her husband is resident abroad (see cl. 24 (1), proviso).

The above is an outline of the main proposals relating to married persons in the Bill, but there are a number of matters of detail which have not been dealt with in this article.

C. N. B.

Costs

SMALL RECOVERIES

At times one is inclined to overlook an important provision or regulation until one is reminded of it sharply, and it is then probably late enough in the day to upset one's calculations.

The writer has in mind at the moment s. 47 of the County Courts Act, 1934; and, when dealing with matters where the amounts involved are small and the question is being contested not so much because of the sum likely to be recovered as because a principle is involved, it is just as well to have the provisions of this section clearly in mind.

It provides by subs. (1) that where an action is commenced in the High Court which could have been commenced in a county court, then, if the plaintiff recovers a sum less than £40 in an action in contract, he shall not be entitled to the costs of the action; whilst if he recovers a sum of £40 or upwards but less than £100 then he shall only be entitled to recover costs on the county court scale. In the case of an action founded on tort, where the plaintiff recovers a sum less than £10 then he will not be entitled to any costs, whilst if he recovers £10 or upwards but less than £50 then he will only be entitled to costs on the county court scale. Where the county court scale is to operate, then the taxing master of the High Court will have the same powers of deciding the scale under which the costs are to be allowed as the judge of the county court would have had.

The importance of this provision cannot be over-rated. It is subject to two exceptions, which are contained in subss. (3) and (4). The first of these two subsections provides that, notwithstanding the provisions of subs. (1), in any action where the High Court or a judge thereof is satisfied that there is sufficient reason for bringing the action in the High Court, or that the defendant objected to the transfer of the action to the county court, then the court or judge may award costs on the High Court scale. By subs. (4), where the action is for a debt or liquidated demand and the defendant pays the amount claimed or a sum not less than £20, or the plaintiff within twenty-eight days obtains judgment in default of appearance, or within the same period obtains an order empowering him to sign judgment, the plaintiff will be entitled to costs on the scale laid down by the Rules of the Supreme Court. We will deal with this situation later.

In the meantime it will be as well to examine a little more closely the details of s. 47, *supra*. In the first place it will be noticed that the section relates only to the costs of the plaintiff, so that where an action is brought in the High Court and the plaintiff fails, then the defendant will be entitled to his costs of the action on the High Court scale, whatever the amount of the plaintiff's claim.

It will be noted that the section only applies in cases where the action could have been commenced in the county court, and for details of the types of action in which the county court has jurisdiction we must turn to s. 40 of the County Courts Act, 1934. Briefly, a county court has jurisdiction to hear actions where the claim does not exceed £200 and, in the High Court, the action would have been tried in the King's Bench Division, or where the claim is in respect of land and the rental of the land does not exceed £100 per annum, or where the action, if in the High Court, would have been tried in the Chancery Division and the value of the subject-matter does not exceed £500. A county court duly appointed by the Lord Chancellor to have admiralty jurisdiction may also try admiralty actions where the subject-matter of the action does not exceed £300, except in the case of salvage claims, when the amount of the limit is raised to £1,000 (see s. 56 of the Act).

In short, the county court now has a very wide jurisdiction in matters where the amount involved is not large, and for fuller details as to this reference should be made to the Act. It may be noticed in passing that the county court has no inherent jurisdiction to deal with actions relating to libel, slander, seduction and breach of promise, although such actions may in certain circumstances be transferred to the county court.

Turning now to the financial limits imposed by s. 47, it will have been seen that, in an action in contract, there are two stages by which these limits are imposed, namely, where the plaintiff recovers less than £40, and where he recovers £40 or more but less than £100. The operative word is "recovers." It does not matter what amount is claimed by the plaintiff: his right to High Court costs in an action which he has brought in the High Court is limited by the amount which he *recovers*. This right to High Court costs is not, however, affected by any

reduction of the amount ultimately recovered by the plaintiff by reason of any counter-claim of the defendant in which the defendant succeeds. Thus, if the plaintiff's claim is for £150 in contract and the defendant counter-claims for £120 and succeeds in his counter-claim, then the plaintiff will not be deprived of his costs, and both parties will in the normal way be entitled to costs on the claim and counter-claim on the High Court scale. The principle involved is that a counter-claim is in the nature of a cross-action. On the other hand, where the plaintiff's claim is reduced below the limits set out in s. 47 by reason of a set-off then the section will apply, because a set-off is a defence to an action (see Cockburn, C.J., in *Stooke* v. *Taylor* (1880), 5 Q.B.D. 569). This seems to indicate that in certain cases it may be advisable for the defendant to have in mind s. 47 when framing his defence to an action where the plaintiff's claim is only a little above the limits imposed by the section.

However, where the plaintiff's claim is above the limits of s. 47, but is reduced below those limits by a payment on account by the defendant after the writ is issued, so that the plaintiff obtains judgment only for the balance, he will not be deprived of his costs (see *Pearce* v. *Bolton* [1902] 2 K.B. 111). This will be so even where the defendant, in ignorance that the writ has been issued, pays all but a pound or so of the claim (see *Lamb Bros.* v. *Keeping* [1914] W.N. 225). Similarly, in *Barker* v. *Hempstead* (1889), 23 Q.B.D. 8, a plaintiff obtained judgment under Ord. XIV of the R.S.C. for all but £3 of the amount of his claim, and was forced to proceed to trial for recovery of the balance, and he was held to be entitled to recover his costs of action on the High Court scale.

Notice in particular that the operation of s. 47 is limited not only by amount but also by the type of action. It applies only to actions in (*a*) contract and (*b*) tort, and to this type of action, moreover, only where there is a recovery of money. Hence, if something else is sought in addition to the recovery of money then the section can have no application. For instance, if an injunction is sought in addition to damages, then, although the damages recovered may be less than the limits prescribed by s. 47, yet the section will not be applicable (see *Keates* v. *Woodward* [1902] 1 K.B. 532). Moreover, in a case where the plaintiff obtained judgment for a sum below the limits of the section, but the principal claim was for an injunction, the section was held to have no application although the claim for an injunction was settled before the trial of the action (see *Doherty* v. *Thompson* (1906), 94 L.T. 626). On the other hand, one cannot ignore the fact that the court has discretion, and in the case of *Cooper* v. *Streeter* (1889), 60 L.T. 95, where there was an action for an injunction which was granted and judgment was given for a very small sum by way of damages, only county court costs were awarded. However, this case was decided before the passing of the present County Court Act, and in any case s. 47, *supra*, is definitely limited to actions in contract or in tort.

One of the questions which cannot fail to arise in the application of this section is whether the action has arisen out of a contract or is founded on tort. The question is not always an easy one to answer. The difficulty will be appreciated when one considers that an action for damages in respect of goods lost by a common carrier is an action founded on contract (see *Pontifex* v. *Midland Railway Co.* (1877), 3 Q.B.D. 23) On the other hand, an action by a railway passenger against the company for damages in respect of injury caused by the negligence of the railway company's servants is an action founded on tort (see *Taylor* v. *Manchester, etc., Railway Co.* [1895] 1 Q.B. 134).

Many interesting cases have arisen out of this question as to the distinction to be drawn between an action founded on contract and an action founded on tort. In particular, one may refer with advantage to the case of *Sachs* v. *Henderson* [1902] 1 K.B. 612, where it was established that an action brought by a person to recover from another person damages for fittings removed from premises in respect of which the plaintiff had entered into an agreement for a lease was an action founded on tort, because, although the initial rights of the parties arose out of an agreement, that agreement had given rise to duties the breach of any of which was a tort.

There we must leave the question of the application of s. 47 of the County Courts Act, 1934, but in the next article we will consider the principles involved by the application of subs. (4) of that section.

J. L. R. R.

LOCAL GOVERNMENT NEWS—XI

A Public School Education for Nothing?

A correspondent has written drawing attention to s. 76 of the Education Act, 1944. This is the section which lays down the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents. In the exercise of all their powers and duties, local education authorities are to have regard to this general principle. "Why then," asks our correspondent, "can I not send my son to, say, Charterhouse and claim the tuition fees from the education authority? At the very least I ought to get the £35 or £40 a year which the education authority would otherwise pay for my son to be educated in one of their schools."

This is a logical attitude and there is a body of opinion amongst educationalists in support of it. There is, however, a contrary view which really regards the independent school as outside the State system of education. Despite the logical merits of some system of paying a grant of £35 to any parent sending his child to an independent school, it seems probable that it cannot be achieved without alteration of the law.

The right of a parent to choose his child's method of education is consistently recognised in the Act, as for example, in s. 8 (2) (*d*) and s. 37 (3). These are detailed applications of the principle enunciated above. Nevertheless, s. 76 is in many ways an unsatisfactory section because it is not easy to say what falls within the phrases "the avoidance of unreasonable public expenditure," and "so far as compatible with the provision of efficient instruction and training." The local education authority are not only concerned with parents who choose to send their children to independent schools but also with parents who wish to pick out a particular county primary or secondary school because, e.g., the buildings are newer than the school more readily accessible and otherwise suitable for their children. Can the authority refuse the parent's wishes because unreasonable travelling expenses would be incurred under s. 55 of the Education Act, 1944? Or because a system of "catchment" areas for particular schools would become farcical if the wish of every parent were to be granted? There are as yet no settled answers to these problems but that they exist perhaps explains the impatience of some education officers with the special problems arising from the existence of independent schools side by side with the State system of education.

The provisions of s. 76 cannot be read in isolation. The first touchstone which every authority will apply to the parent's expressed choice of school is that provided by s. 36 of the Act of 1944. At the chosen school will the child receive full-time education suitable to his age, ability and aptitude? For although the parent has a choice of school he also has the duty under the Act to secure *suitable* education for his children. If a parent wishes to send a child to an independent secondary school (i.e., a public school) the local education authority will not usually consider assisting him unless the child has passed the appropriate entrance examination or can otherwise satisfy the authority that he will profit from the education intended for him (and see s. 37 (3)).

Many public schools are boarding schools and this raises a further point which is really an extension of the principle of s. 36 that education is to be suitable for the age, aptitude and ability of the child. Education authorities must have regard to the necessity for providing boarding accommodation for pupils for whom education as boarders is considered by their parents *and* by the authority to be desirable (s. 8 (2) (*d*)). The twin principles of parent's choice *plus* suitability of school can here be clearly seen. As a general rule most authorities will only consider boarding education desirable for a pupil if special circumstances exist. The parents may have to go abroad or may be divorced; the home circumstances may be harmful to the pupil or his home may be too far away for attendance at a suitable day school. Even where these circumstances exist the boarding fees must be recovered from the parents of a pupil at a boarding school maintained by the education authority unless suitable education can *only* be provided in a boarding school or the case is one of hardship (s. 61 (2)). The pupil at a boarding school *not* maintained by the authority can hardly be in a better position under the Act than one who is attending a boarding school provided by the authority. It follows, therefore, that the boarding fees at a public school can only be fully payable by the authority in the rare case of a boarding school being the only suitable way of educating the child. They will not be payable if the only reason why the child is at a boarding school is because of the parents' desire—although in this case the parent may receive assistance in the way we are about to describe, on the grounds of hardship.

On top of everything we have so far considered sits s. 81, which provides for regulations to be made to empower local education authorities, *inter alia*, to pay the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable. The regulations in question are the Regulations for Scholarships and Other Benefits, 1945. Regulation 3 makes it clear that the authority may pay boarding fees as well as tuition fees. The regulations are only designed to avoid hardship to parents and pupils, and an applicant for a grant will, therefore, receive assistance in accordance with an income scale. As the section and the regulations specifically provide for the payment of fees in cases of hardship, an education authority is not taking an unreasonable view of the law if it will only assist a parent to send his child to a fee-paying school if the parent's income is below a certain level. This would seem to be still true even if the effect is to deprive the parent of any effective choice of school.

To sum up, if a parent chooses a particular school for his child, there are various hurdles to be surmounted before the general run of authorities will assist the parent to achieve his wishes: (1) Is the school suitable for the pupil? (2) If it is a boarding school, are there reasons to justify the provision of a boarding school education? (3) Assuming the school is suitable the authority will then normally apply a means test and assist towards either the tuition fees or the tuition and boarding fees if boarding education is considered justified. (4) If education suitable to the age, ability and aptitude of a pupil can *only* be provided in a boarding school—a rare case—it would seem that the fortunate parent can ask for the whole of the fees to be remitted (s. 61). If, for example, a pupil had an aptitude for ballet dancing and nothing else, and if the only suitable schools involved the pupil in staying in London, the authority would have to remit the whole of the fees involved both for tuition and boarding.

We need only mention in conclusion that the "means test" applied by most authorities is based on a parent's *net* income. This is arrived at by making specified deductions in respect of rent, children, school fees, etc. In general, assistance cannot be given if the *net* income of the parent is much over £1,000. Each authority has its own approved scale.

Planning the Countryside

In an address on 10th November, 1949, Mr. E. M. King, M.P., the Parliamentary Secretary to the Minister of Town and Country Planning, put the cat among the pigeons with a statement to the effect that "not everyone wants to live in a community. Some, and among them those who contribute most to civilising influences, like to live in isolation. That is a personal decision and it is not for planning authorities to interfere with it." Was this, planners asked, the voice of authority or the breath of heresy? Current planning theory tends to draw a restricted line around existing villages and to refuse most proposals for development outside.

The Parliamentary Secretary's words have now been amplified in a paper published by the Ministry entitled "Notes on the Siting of Houses in Country Districts." One section of these notes deals in some detail with the problem of scattered development and comes to the refreshing conclusion that good houses, well sited, should be looked upon as a permanent addition to the health of the countryside. Encouraged by passages in earlier Ministry circulars, certain authorities have apparently come to the conclusion that the proper course was to refuse all applications for isolated houses. These authorities are now encouraged to abandon the pursuit of this negative uniformity in favour of accepting a limited number of houses on carefully chosen sites.

The notes also deal with the much more difficult problem of deciding whether some villages should be expanded at the expense of others, and contain short but helpful passages on cottages for farm workers and applications for permission to build a house on what is described as a "smallholding." A more sensible policy on isolated country houses will probably reduce the number of these "smallholding" applications.

J. K. B.

Mr. William Hanlon, managing clerk to Messrs. Wade & Co., of Bradford, has completed forty years' service with the firm, and has received a presentation to mark the occasion.

Mr. Anthony L. Frieder, solicitor, of Hanley, was married on 5th June to Miss Dorothy Pamela Collins, of Audlem.

The engagement is announced between Mr. Robert Smith-Dawson, assistant solicitor to Wallasey Corporation, and Miss Ailsa Jean Lees, solicitor, of Birkenhead.

Alderman S. W. Moys, solicitor, has been elected Mayor of Lewisham.

A Conveyancer's Diary

STAMP DUTY ON CERTAIN ASSENTS

THE widow of an intestate whose residuary estate does not exceed £1,000 in value, in her capacity of administratrix, "appropriates" a cottage forming part of the estate in part satisfaction of the charge for £1,000 to which, in her capacity as the intestate's widow, she is entitled under s. 46 (1) of the Administration of Estates Act, 1925, and assents to the vesting of it in herself. Is the assent liable to stamp duty or not?

The question is constantly cropping up in some such form as this, and although there can be little doubt, on reflection, that the answer is no, there are, apparently, a considerable number of people who refuse to be convinced; that, at least, is my impression from the regularity with which the question is repeated.

The argument in favour of the view that such an assent should be stamped proceeds, it would appear, on the following lines. An assent which does no more than carry out a specific direction in a will, such as a devise, did not attract stamp duty before 1926 (*Kemp* v. *Inland Revenue Commissioners* [1905] 1 K.B. 581), and this freedom from duty has been preserved by s. 36 (11) of the Administration of Estates Act, 1925. But an appropriation, whether it is made under the statutory power (*Jopling* v. *Inland Revenue Commissioners* [1940] 2 K.B. 282) or not (*ibid.*, and *Re Beverly* [1901] 1 Ch. 681), is a different matter, and an instrument transferring property in pursuance of an appropriation (and this would include an assent so made) is chargeable with stamp duty in all respects as if it were a conveyance on sale. In taking the realty in part satisfaction of her charge, the widow is, in effect, exercising the statutory power of appropriation conferred by s. 41 of the Administration of Estates Act, 1925, with the result indicated.

The fallacy in this argument is to look upon the transaction as an appropriation. The precise quality of an appropriation, when regarded from the point of view demanded by this problem, is not altogether easy to formulate. In *Re Beverly*, *supra*, the rights of the beneficiaries arose under a trust for sale contained in a will, and Buckley, J., defined the principle applicable to such a case in the following words: "Under a trust for conversion each person is entitled of course to money, and the principle, I apprehend, is this: That where the trustee is directed to convert and to pay the beneficiary money, it must be competent for him to agree with the beneficiary that he will sell the beneficiary the property against the money which otherwise he would have to pay to him; but it is not necessary to go through the form of first converting the property and then giving the beneficiary the money which the beneficiary may be desirous immediately to reinvest in the property which has just been sold." It may be observed that where there is a trust for sale, the analogy between an appropriation and a sale, which in *Re Beverly*, *supra*, was considered to be strong enough to justify equating the two transactions for some purposes, is particularly striking; on the analysis in that case, the consensual element in the transaction is particularly stressed. This consensual element is not nearly so evident, although still present, where an appropriation is made in satisfaction of a benefit conferred directly by gift upon the beneficiary, without the interposition of a trust for sale. It is least striking in the case of a statutory appropriation, and this point was strongly, although unsuccessfully, urged on behalf of the subject in *Jopling's* case, *supra*. There are many conveyancers who doubt the soundness of this decision, and would like to see the question which arose there taken to a higher court, but that is by the way; the important point in *Jopling's* case for the purpose of the problem now under consideration was that the statutory power was treated as being in no material way different from the power of appropriation which existed before 1926, i.e., the decision of the personal representative to appropriate, together with the consent of the beneficiary, was treated as having the same element of contract in it as an appropriation made in exercise of the non-statutory power.

But this element of contract does not exist in the hypothetical case being considered. Under s. 46 (1) of the Administration of Estates Act, 1925, the residuary estate of the intestate stands charged, in circumstances such as these, with the payment to the widow of £1,000. It is true that the section goes on to say "with interest thereon from the date of the death, etc., until paid or *appropriated*" (my italics), but the use of the word "appropriated" in this context does not affect the fact that the widow's entitlement is one that can be enforced, if the residuary estate is insufficient, or only barely sufficient, to meet it by the widow taking over the property comprised in the estate *in specie*. That is what in the language of international politics is called a unilateral act, with no element of consensus about it. As it was the element of consensus that was considered, in *Jopling's* case, to put a statutory appropriation on the same footing as a conveyance on sale, and chargeable to stamp duty accordingly, it is clear that, in the circumstances of the case under consideration, the widow's assent escapes any charge to duty. And the position would be the same if, in similar circumstances, the assent were to be made not by the widow, *qua* administratrix, in favour of herself, *qua* beneficiary, but by an outside administrator in her favour.

* * * * *

Some months ago, after the decision of the Court of Appeal in *Re Kellner's Will Trusts* (1949), 93 SOL. J. 710, I made the comment (93 SOL. J. 786) that if s. 60 of the National Health Service Act, 1946, covered a gift by will to a hospital which became "nationalised" under that Act made before the appointed day for the purposes of that Act (that being the point decided in the *Kellner* case), and s. 59 covered a gift made after the appointed day, there was still another possibility which was not, apparently covered by any provision of the Act; that was a gift contained in a will made before the appointed day of a testator who died after that date in favour of a hospital transferred to the Minister under the Act. I added that there seemed to be a good deal to be said for the view that such a gift lapsed, on the principle adopted in such cases as *Re Rymer* [1895] 1 Ch. 19.

When I wrote those words it seemed hardly probable that this question, which must have arisen on scores of wills, should have had to wait six months for decision, and then to arise in a case of which the complete effect is, to say the least, a little obscure. But that is the position to-day. In *Re Morgan's Will Trusts* (1950), 66 T.L.R. 1037, a will, made in 1944, contained a bequest upon trust for sale and a direction that the proceeds of sale should be held for the benefit of a certain named hospital. The testatrix died after the appointed day, and the hospital became vested in the Minister under the Act. It was argued for the next of kin that the hospital which the testatrix had intended to benefit had ceased to exist, and that the gift had failed. Roxburgh, J.,

refused to accept this view and upheld the validity of the gift. The judgment is fully reported, and it is apparent that the learned judge attached considerable force to the form of the bequest (" for the benefit of ") in holding, as he did, that the gift was for the general purposes of the hospital, and that these purposes had continued despite the operation of the Act. Until the arguments of counsel are reported it is impossible to say whether the case for a lapse was put on the basis of cases such as *Re Rymer, supra*. I will return to this interesting and important case in due course, and I only mention it now in order to point out that this may have been a decision on its own facts and words, and not necessarily applicable to similar cases where a gift has been made by will simply to a named hospital.

"A B C"

Landlord and Tenant Notebook

PROVING FORFEITURE

It has always been the policy of the law to put every conceivable obstacle in the way of a landlord who seeks to exercise a power of re-entry on breach of condition, and whom it has been inclined to regard as a person of infanticidal tendencies. True, no rooted objection to the insertion of such a power can be found: if the lease of a farm does not contain one, it is the landlord's own fault (see the Agricultural Holdings Act, 1948, s. 5 (1) and Sched. I, para. 9), and it may well prove the most valuable weapon in his armoury. Nevertheless, when it comes to enforcement, there are not only the provisions of the Law of Property Act, 1925, s. 146, to be observed, but also the insistence on strict proof (and discovery will not be allowed for the purpose: *Mexborough (Earl)* v. *Whitwood U.D.C.* [1897] 2 Q.B. 111 (C.A.)).

The difficulty of proving, for instance, that a tenant has not complied with a simple covenant to insure was exemplified by *Doe d. Bridger* v. *Whitehead* (1838), 8 A. & E. 571, when the landlord relied on the defendant's refusal to answer inquiries or to produce documents and contended that, as the covenant demanded insurance in some office in or near London, he could not be expected to call any direct evidence in support of his allegation. At first instance, Littledale, J., told the jury that he could have inquired at all offices and that the defendant ought to have given the required information, and was about to direct them on a waiver point when they stopped the case. The plaintiff sought to have this finding disturbed on the ground that the jury could not have appreciated the importance of the learned judge's earlier remarks; but Denman, C.J., held that the non-production was quite insufficient: the estate was vested in the defendant; if a landlord will make the conditions of his lease such as to render the proof of a breach very difficult, the court cannot assist him. The hint has been taken, and most covenants to insure now stipulate particular insurers, or require production of policy and receipts, or both.

The reasoning was applied, by some members of the Court of Exchequer Chamber at all events, in different circumstances in the case of *Toleman* v. *Portbury* (1870), L.R. 5 Q.B. 288. The plaintiff, who had let a house by a lease which forbade the lessee to permit any sale by auction without her consent (and contained the usual forfeiture clause), issued writs against no fewer than six persons (of whom two did not trouble to appear): the lessee, three people to whom he had assigned his furniture, a sub-lessee, and one who was described as occupying a portion of the premises (a dwelling-house in what was then a fashionable part of London). She proved that a sale by auction had taken place, but did not avail herself of her right to give evidence; and, in the event, a nonsuit was upheld by a court consisting of as many barons of the exchequer as there were defendants, some of whom emphasised the absence of evidence that the plaintiff had not consented to the sale, others the absence of evidence that the lessee had permitted the sale.

That such decisions are not to be treated merely as examples of the sort of thing that might happen when technicalities were given more weight than they are nowadays was shown by the more recent case of *Duke's Court Estates, Ltd.* v. *Associated British Engineering, Ltd.* [1948] Ch. 458; 92 Sol. J. 377. Here the landlords complained of breach of a covenant " to use the demised premises only as offices in connection with the tenants' business of engineers and/or other businesses in which the tenants and their subsidiary or associated companies might be interested." The lease also contained an ordinary covenant against sub-letting, etc., without consent, but a proviso said that the use of part of the premises by subsidiary or associated companies should not be deemed to be a breach of this covenant.

The claim was based on breach of both covenants, in the alternative: it was alleged that the tenants had used or permitted the premises to be used by specified companies and persons or that they had sub-let or parted with possession to those companies and persons, and further alleged that these were not subsidiary or associated companies and their businesses not businesses in which the tenants and their subsidiary or associated companies were interested.

The defendants' reaction was to deny that there had been any underletting or parting with possession at all, to admit permitted user by the named companies of part of the premises, and to deny the allegation that those companies were not subsidiary or associated companies and their businesses not businesses in which they were interested. Whereupon the plaintiffs asked for further and better particulars of the last-mentioned denial, and, on these being refused, took out a procedure summons.

Two points were made, and in dealing with each Harman, J., made references to the somewhat special position of forfeiture actions. The plaintiffs argued that the admission mentioned effected a transfer of the burden of proof. Having admitted user by others it was for them, so went the reasoning, to show that those others were subsidiaries, etc. The learned judge disagreed with this: the burden in a forfeiture action is " particularly " laid on the plaintiff; and the plaintiffs, in order to deprive the defendants of the estate which they had granted to them, must show that the defendants had permitted user by persons not associated with them. It would be different if the defendants had admitted under-letting but pleaded consent.

Then it was contended that the plaintiffs, apart from the onus question, were entitled to know what the defendants' case was as their denial was a double negative. But Harman, J., pointed out that the issue was adequately defined: it was whether the people who had had the use of part of the premises were within the permitted relationship; it was for the plaintiffs to prove that they were not, not for the defendants to prove that they were. To order the particulars would go far towards making the defendants

disclose their hand and provide the plaintiffs with material for proving their case, the onus being on the plaintiffs *in an action of this sort* to prove their case without any such assistance.

The difficulty of proving unauthorised alienation, especially when sub-letting of part of a house is concerned, will be a familiar one, at all events as regards cases in which the tenant preserves a dignified or any other kind of silence. From the public point of view this may well be considered unfortunate, as many a slum owes its origin to failure to enforce such restrictions. Till recently, I believe that some landlords were able to find some justification for their suspicions by counting milk bottles, but the derationing of the commodity in question has recently deprived such phenomena of evidential value. One wonders how planning authorities will set to work when seeking to enforce s. 12 (1) of the Town and Country Planning Act, 1947, which restricts development (by subs. (3) it is declared, for the avoidance of doubt, that the use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and of each part thereof so used).

R. B.

PRACTICAL CONVEYANCING—XVIII

Statutory Modifications of Covenants

The law relating to restrictive covenants is complicated in the extreme and so it is most unfortunate that modern statutes are increasing materially the difficulties of solicitors in advising on their application. If a client calls and asks whether he can prevent a neighbour from carrying on some unpleasant activity in a residential neighbourhood, one of the first lines of approach is to ascertain whether there are any enforceable restrictive covenants. How many solicitors, however, go a stage further and, if they find enforceable covenants, consider whether their effect may have been negatived or modified by a special statutory provision? Unfortunately, such provisions are growing in number and it may be useful to outline them.

In the first place, if it is proposed to convert a house which cannot readily be let as a single tenement into flats, provided planning permission has been obtained, the county court may vary any covenant affecting the house (Housing Act, 1936, s. 163; Housing Act, 1949, s. 11). If the circumstances are such that the court is likely to vary a covenant there can be little object in trying to enforce it. The taking in of lodgers may also be justified, notwithstanding a breach of covenant, if the accommodation has been registered with the local authority pursuant to Defence (General) Regulation 68CB.

The use of requisitioned land notwithstanding any restriction is permitted by Defence (General) Regulation 51 (2), and, on compulsory acquisition of such land, any restriction may be discharged or modified in order to permit the retention of government war works (Requisitioned Land and War Works Act, 1945, s. 7 (1)). A rather similar provision is contained in the War Damaged Sites Act, 1949, s. 4. It will be remembered that the main object of this Act is to enable a local authority to take possession of war-damaged land which is detrimental to amenities. The use of such land for the purposes of the functions of the authority or for purposes authorised by a lease granted by the authority is lawful *notwithstanding any restrictive covenant*, although persons injured by a breach of covenant are given a right to compensation.

Rather more important in practice is the modification of covenants restricting the keeping of animals on land by Defence (General) Regulation 62B. The keeping of pigs, hens or rabbits was permitted notwithstanding any contrary provision in any lease or tenancy or in any covenant, contract or undertaking. This may have been reasonable in wartime, but it is surprising to find, in the Allotments Bill at present before Parliament, a clause stating that as from the time when Regulation 62B ceases to have effect, it shall be lawful to keep, otherwise than by way of trade or business, hens or rabbits (pigs are *not* mentioned) notwithstanding any contrary provision in any lease or tenancy or in any covenant, contract or undertaking relating to the use to be made of the land. There is a proviso that the clause shall not authorise any hens or rabbits to be kept in such a place or in such a manner as to be prejudicial to health or a nuisance. Nevertheless, this proviso does not meet what are, in the opinion of the writer, serious objections to the clause. If a building scheme covering a residential area has imposed a clear prohibition on the keeping of hens and rabbits why should a resident who is annoyed by the keeping of them have to undertake the burden of proving that the annoyance is so great as to be prejudicial to health or to come within the definition of "nuisance"? Secondly, the writer protests, as he has protested before, against the inclusion in statutes of sections which affect other branches of the law than that dealt with by the main provisions of the statute. One can expect in an Allotments Act a section modifying restrictive covenants affecting allotments, but such an Act should not modify covenants which have no relation to allotments. One wonders if our legislators ever give a thought to the position of the practising solicitor or to the manner in which the public are advised on legal matters. Frequently, a client who wants legal advice calls on his solicitor without previous warning. If he asks whether he can enforce a covenant against the keeping of hens affecting residential property can the solicitor fairly be expected to remember a section of an Allotments Act which happens to modify the client's rights? And if he cannot how do our legislators think the public are to be informed of their rights?

In conclusion, attention is drawn to the necessity for considering town planning legislation when advising a client on his rights against neighbours carrying on annoying activities. It is as well to inquire whether such activities have received any necessary planning permission. Very often it will be found that they are in breach of planning control and that, on the matter being brought to their notice, the local planning authority can stop the activity by service of an enforcement notice.

J. G. S.

OBITUARY

Major J. C. O. Dickson

Major John Charles Oswald Dickson, D.F.C., solicitor, of Preston, died on 10th June as the result of an accident. Admitted in 1923, he was a Past-President of the Preston Law Society.

Mr. R. J. Freeman

Mr. Russell Jourdan Freeman, notary public, senior partner of Messrs. John Newton & Sons, London, E.C.4, died on 15th June. He was admitted in 1903.

Mr. A. M. Ingledew

Mr. Arthur Murray Ingledew, solicitor, of Cardiff, died on 5th June, aged 86. Admitted in 1886, he was a member of the Council of The Law Society and in 1937 was elected Vice-President. In 1907 and 1926 he was President of the Incorporated Society of Provincial Public Notaries of England and Wales. In 1925 he was President of the Associated Provincial Law Societies, and in 1936 President of the Associated Law Societies of Wales. He was a past-President of the Cardiff Law Society.

HERE AND THERE

PARSON'S DILEMMA

SINCE I drew the attention of my readers to the literary and controversial merits of, and the excellent fourpennyworth of reading matter provided by, the Stationery Office publication on the case of the Rev. Mr. MacManaway, I see that the full de luxe edition in blue has become available to the intelligent. Moreover the reverend gentleman, himself grasping the unsolved dilemma firmly by the horns, with all the resolution of St. Dunstan seizing the devil's nose in his tongs, has taken the oath as a Member of Parliament, not without a protest from the Member for Hornchurch, raising a point of privilege, that since the Select Committee could not make up its mind whether or not he was eligible to sit, the House had a duty not to admit any person to its deliberations who might in the end turn out not to be qualified. Of course one can take it for certain that some sort of retrospective legislation will be passed to cover him, for should any of the execrated race of common informers choose to gamble on an even chance, in view of the doubtful oracle of the Select Committee, and should the courts hold that, as the law now is, an Irish parson cannot be a Parliamentarian, he stands to lose £500 a day for his temerity in sitting or voting. It is devoutly to be wished that when something is done in the way of legislation it should not be approached in the good old English manner—*ad hoc*, casual, accidental, dealing with the particular case and nothing else. There is a chance to tidy up the whole relationship of Parliament and the ordained priest, which incidentally affects Roman Catholics as well as Protestants. It is, after all, a point in a small compass. No one is asking for an all-embracing Act to review all the do's and don'ts to which the clergy are subject, their exclusion from juries or from the practice of trade, the embargo on "dice, cards or tables," on "resort" to alehouses and taverns, on any but plain night-caps, on general idleness, their immunity from arrest on civil process while attending an episcopal visitation. These and other weighty matters affecting their life, liberty and pursuit of happiness must stand over for further consideration.

WOMAN'S PAGE

So far as it has run its course this Trinity Term seems to have been woman's term at the Law Courts. On the material so far provided an ingenious editor of one of the many feminine weeklies could practically compound an entire number—stories, dress hints, worry corner and all. Lacking the special virtuosity to do the job ourselves, we can only hand over the raw materials together with the suggestion and hope they will be appreciated in the proper quarter. It would be surprising if Sir Tom Eastham, K.C., could not contribute the fashion page, after the experience of investigating, with the assistance of contending fitters to represent the adverse parties, the merits and/or demerits of forty-five dresses exhibited on seven dummies of widely differing dimensions and one pretty, dark-haired mannequin—normal measurements. In a life dedicated to the minutiæ of building contracts and anything else that the King's Bench judges find too tedious to sit through, this must have been, as it were, a palm-fringed oasis for an Official Referee. Incidentally, one would have thought that this would have been the very case for briefing an all-woman team at the Bar. There are now two available "silks" and plenty of juniors, ornaments to the Temple in every sense. While we are on the topic, you remember (or don't you ?) the similar case of alleged misfit being tried by an old county court judge at Clerkenwell. The defendant (who was refusing to pay for the dress) put it on. "It seems to me," said His Honour tentatively, "that it is lacking in room." "She's got more underclothes on than when I fitted her," screamed the plaintiff. "It's a lie. I'll show," retorted the defendant, starting to unbutton. "No, no, no," said the judge. "Pinch her," called the plaintiff. Distracted, the judge appealed to a substantial middle-aged matron sitting at the back of the court. Would she investigate ? She would. The ladies withdrew to the robing room. Report: the defendant was wearing eight vests, which was somewhat excessive even for a very cold day. Judgment for the plaintiff.

MORE MATERIAL

WE'VE lingered rather long over the fashion page, but we cannot leave it without a word on a defendant before Roxburgh, J., whose white-edged cap, black veil and general air of elegant widowhood would have done honour to *Vogue*. The learned judge in delivering his decision credited her with an amazing power of soliloquy and paid tribute to her theatrical talents in the witness-box. The evidence ranged dramatically over a long period of years, from her native Hungary to the United States and over to England, through four marriages and an inherited fortune of six figures (subject to a protected life interest). Yes, that can provide the serial for our weekly. The breach of promise case before Sellers, J., will do for the short story—Mayfair beauty salon receptionist, meeting with stranger over a walking stick purchase, broken marriage, fresh meeting with stranger on Balham Station, dinner, cinema, courtship, undue influence of the man's aged parents, clouded romance. The only difficulty is the happy ending, for, by women's papers standards, £500 damages is not the right sort of happy ending. Worry corner: "For fifteen years my husband has thrown knives and flaming hatchets at me." Divorce court situation—but they were show people and it was part of the show. "It is one thing to give a power of attorney to your solicitor. It is another to give it to your lover. What is the position if your lawyer and your lover is the same person ?" Romer, J., on an Irish-Anglo-Italian tangle that somehow found its way to the Chancery Division. Yes, that's definitely a question for the Problem Page.

RICHARD ROE.

BOOKS RECEIVED

The Lands Tribunal: Jurisdiction, Law and Procedure. By M. DUNBAR VAN OSS, M.A., of the Inner Temple, Barrister-at-Law, and NIALL MACDERMOT, of the Inner Temple, Barrister-at-Law. With Practical Examples by RONALD COLLIER, F.R.I.C.S., F.C.A.E.A.I. 1950. pp. xl, 412 and (Index) 39. London: Butterworth & Co. (Publishers), Ltd. 35s. net.

A Lawyer Tells. By P. A. JACOBS. 1950. pp. (with Index), 158. Melbourne: F. W. Cheshire Pty., Ltd.; London: Wadley & Ginn. 12s. 6d. net.

Stone's Justices' Manual, 1950. Eighty-second Edition in Two Volumes. Edited by JAMES WHITESIDE, Solicitor, Clerk to the Justices for the City and County of the City of Exeter. 1950. Vol. 1, pp. cccxxxi and 1,608. Vol. 2, pp. vii, 1,383 and (Index) 210. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. Thick Edition: 67s. 6d. net; Thin Edition: 72s. 6d. net.

Income Tax on Landed Property. By N. E. MUSTOE, M.A., LL.B., of Gray's Inn, Barrister-at-Law. Second Edition. 1950. pp. xliv and (with Index) 478. London: The Estates Gazette, Ltd. 37s. 6d. net.

An Introduction to International Law. By J. G. STARKE, B.A., LL.B., B.C.L. (Oxon.), of the Inner Temple, Barrister-at-Law. Second Edition. 1950. pp. xvi, 397 and (Index) 25. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

Medical Jurisprudence and Toxicology. By JOHN GLAISTER, J.P., D.Sc., M.D., F.R.S.E., of the Inner Temple, Barrister-at-Law, Regius Professor of Forensic Medicine, University of Glasgow. Ninth Edition. 1950. pp. xi and (with Index) 755. Edinburgh: E. & S. Livingstone, Ltd. 35s. net.

Primitive Law. By A. S. DIAMOND, M.A., LL.D., Barrister-at-Law. 1950. pp. x and (with Index) 451. London: C.A. Watts & Co., Ltd. 15s. net.

REVIEWS

Russell on Arbitration. Fourteenth Edition. By ERNEST WETTON, of the Middle Temple, Barrister-at-Law. 1949. London: Stevens & Sons, Ltd. 70s. net.

Russell is a work of long-standing authority, and is here brought up to date in its centenary year. Mr. Wetton has faithfully incorporated over fifty decisions and other new materials which have become relevant since the publication of the last edition in 1935. There has been no new Act of Parliament dealing generally with arbitration since that year, but the recent nationalising measures, the Town and Country Planning and Health and Insurance Acts, contain several provisions on the subject, not conforming to any set plan, which are here shortly described—somewhat summarily in fact. Some of these provisions must now be read with the Lands Tribunal Act, 1949, which is subsequent in date to this edition. A very useful feature will be the 1948 revision of the rules of the London Arbitration Court, which set up an extra-statutory form of procedure giving wider powers to the arbitrator than those possessed under the Arbitration Acts. These rules are appended, with a suggested clause for bringing them into play.

The form of the work will be well known to users of former editions, and no doubt when Acts of Parliament classify the main portions of the subject-matter it is a sound plan to comment *seriatim* on the sections of the Acts with such cross-references as are required. But the reader tires very quickly of the same page-heading through 320 pages of the book, and the practitioner who dips into it may have to execute much turning of leaves back and forth in order to discover about what section he is reading. Book production is to-day carried on under difficulties which tend to make side-headings, alas, rare. The next best thing would be an appropriate general catchword at the top of each page.

The notes on the sections of the Arbitration Acts are exhaustive and of unique authority. Very valuable also are the three introductory chapters. A good index and table of cases completes the scheme.

The Law of Income Tax. By E. M. KONSTAM, K.C. Eleventh edition. 1950. London: Stevens & Sons, Ltd; Sweet & Maxwell, Ltd. £8 8s. net: Annual service subscription, 30s.

Of several modern textbooks on income tax, Konstam is the one which carries on the title page the readiest appeal to the practising solicitor. "A treatise designed for the use of the taxpayer and his advisers" is a sub-title which evokes in such a reader the satisfied comment: "Just what I've been looking for!" Not for him, at all events in preparing his advice, the popular approach to this pervasive subject by way of generalisation and numerical example; nor yet any abstruse discussion of economic principles or accountancy practice. His task is to advise on the law, and it is the law of income tax with which Konstam declares itself to be concerned—a declaration no longer, it is true, emblazoned on the spines of its two volumes, but retained on the fly leaf and faithfully honoured throughout the text. Perpetuating a style such as generations of text-writers have found suitable for the exposition of the effect of statute and case law, the new edition gains by the device of numbering the paragraphs to fit in with the loose-leaf service plan by means of which it is proposed to keep subscribers abreast of current shiftings in the most treacherous of legal quicksands.

The legal bias of the book is exemplified in the footnote references to cases. These are, where possible, to the Law Reports or the usual practitioners' series. The official unsigned publication known as Tax Cases, which is difficult of access for the office-bound country solicitor, is cited only where the more usual series do not report the case, though the table of cases gives full documentation. This leads us to our only criticism of the new set-up. A copious index and the tables are permanently bound with volume I, which is convenient enough at the outset of the book's career. But is not this scheme likely to prove too rigid when the service issues come into use? The annotations to the author's commentary which are to form part of the service will always need to be consulted in conjunction with volume I to guard against the possibility of change. An expandable index would have saved the user many double dippings into the work. And also on grounds of convenience we imagine that most "dippers" would have preferred an alphabetical arrangement of the index sub-headings. These matters apart, the production is exceptionally handsome, the type clear, and the wide pages quite delightful in their ease upon the eye.

We have already referred to the method of citation of cases. Perhaps the outstanding feature of the author's commentary which makes up volume I is the extraordinary wealth of authority which it embodies. As a rule the pith of a decision is neatly extracted in a single sentence or phrase, but the facts themselves are detailed on occasion (somewhat hesitantly, to judge from a remark in para. 90), for instance when they illustrate the predisposition of the courts in matters turning on a balance of facts, as in the awkward topic of company residence and domicile. Merely illustrative decisions are not neglected, a valuable facility for the practising reader who must advise confidently. There may be two schools of thought as to the advisability of reporting mere examples of legal principles adequately to be gathered elsewhere, though the advocates of selective reporting have a weaker case in regard to tax law, where the court's jurisdiction on appeal from the Commissioners is limited to the correction of errors in law, than to those spheres where the court is the fact-finding tribunal. But, once reported, no decision ought to be left unconsidered by an adviser, and in Konstam he can be sure of finding the necessary references woven into the statutory fabric of the taxation scheme.

All this is not to imply that first principles, which are either statutory or to be deduced from the words of Parliament, are in any way neglected by Judge Konstam. The introductory chapters, and the general explanations throughout the work, vie in readability with any popular exposition of the Acts, and, needless to say, excel in accuracy. In these passages judicial quotations are freely employed. A new chapter 2 explains the double taxation law, the text of the orders on this subject which have been made to date being included with that of the statutes and regulations in the loose-leaf volume II. It is particularly useful to have the text of the Acts keyed to the author's commentary by means of unobtrusive side references.

We hope the author will not think us merely finicky if we question his statement (para. 327) that *Gimson* v. *I.R.* [1930] 2 K.B. 246 was approved by the House of Lords in *Neumann* v. *I.R.* [1934] A.C. 215, in any sense which renders that approval binding authority for the proposition that a dividend is not to be included in total income so far as it represents a distribution of capital receipts. That proposition has, we think, always been accepted on all sides and was in fact conceded by the Crown from the early stages of the *Gimson* case (see p. 597 of the report in 15 Tax Cases). The decision in *Gimson* related not to the capital content of a dividend but to that part paid from non-taxable income, and the dividend in *Neumann* came from what in the ultimate analysis was a taxed source. Nor is *Gimson* concerned with preference dividends, as the footnote to para. 283 would (no doubt inadvertently) seem to imply. But the potential reader may judge from these pinpricks of the reviewer how little vulnerable we respectfully deem the text to any more hurtful attack.

NOTES OF CASES

COURT OF APPEAL

RENT RESTRICTION: RECOVERY OF PREMIUM

Haberman *v.* Westminster Permanent Building Society

Evershed, M.R., Asquith and Jenkins, L.JJ.
4th May, 1950

Appeal from Willesden County Court.

The plaintiff paid a premium of £400 on taking a tenancy of a flat, within the Rent Restriction Acts, owned by the defendants. By the proviso to s. 2 (5) of the Landlord and Tenant (Rent Control) Act, 1949, where an agreement made after 25th March, 1949, and before the coming into force of the Act includes a premium which would have been unlawful if s. 2 (1) had already been applicable "but which, if paid, would be recoverable by virtue of . . . this subsection, the agreement shall . . . be voidable at the option of either party thereto." The tenant brought an action to recover the premium. The landlords did not deny liability, but counter-claimed for possession on the ground that they exercised their option under that proviso. The county court judge gave judgment for the amount of the premium, but also made an order for possession. The tenant appealed.

ASQUITH, L.J., said that the main part of s. 2 (5) enabled the tenant to recover, on his claim, the premium of £400 which he had paid. The case turned entirely on the construction of the proviso, which the landlords relied on as entitling them to possession. The words "if paid . . . would be recoverable" in the proviso must merely mean "if it [i.e., the premium] had been paid," and implied that the proviso was limited to cases in which it was not paid. He was of opinion that the proviso did not apply to this case, where the premium had been paid. Since no option to avoid the tenancy existed except in the event that the proviso applied, that was sufficient to entitle the tenant to succeed.

EVERSHED, M.R., and JENKINS, L.J., agreed. Appeal allowed.

APPEARANCES: *Montague Waters* (*Matthew Trackman and Co.*); *L. A. Blundell* (*Arnold Lee & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: TENANT NOT IN OCCUPATION

Hallwood Estates, Ltd. *v.* Flack

Evershed, M.R., Asquith and Jenkins, L.JJ.
9th May, 1950

Appeal from Kingston County Court.

The defendant was the statutory tenant of a house at which he ran a school. He acquired a matrimonial home nearby, but continued to maintain a bedroom at the school. His intention was that his wife should sell her house, which was the matrimonial home, and that they should together make their home in the house of which he was the tenant. The landlords claimed possession of the tenant's house on the ground that, through non-occupancy, he had lost the protection of the Rent Restriction Acts. The county court judge dismissed the action, and they appealed.

EVERSHED, M.R., said that recent decisions had shown that a statutory tenant might be a two-house man, whose business activities made it necessary for him to have, in addition to his home with his wife and children, a home in the proximity of his business. Such cases must be regarded with some reserve, and each case of the kind must depend on its particular facts. Here the county court judge had found that the tenant had ceased to occupy the house as his home. But he had gone on to find an intention in the tenant to reside there after sale of the present matrimonial home. The earlier finding that the tenant had ceased to occupy the house seemed inconsistent with the later finding of intention to return. In the earlier finding, however, the judge had meant that in 1949 the tenant did the equivalent of going away from the house for a substantial period but that any presumption which that act might raise had afterwards been repelled. In the class of case to which *Brown* v. *Brash* [1948] 2 K.B. 247; 92 SOL. J. 376, belonged, when a tenant went from home on a prolonged absence, the onus was upon him, as Asquith, L.J., had said, to repel the presumption created and establish a *de facto animus revertendi*. That was the test which the county court judge had applied here, and it was a question of fact for him. The appeal should be dismissed.

ASQUITH, L.J., agreeing, said that in such a case as this, when the tenant had been physically absent from demised premises over a prolonged period, he must, as a condition of retaining the protection of the Rent Restriction Acts, establish two things, the *animus revertendi* and the *corpus possessionis*. Both questions were ones of fact, and the county court judge had found both things on sufficient evidence. Appeal dismissed.

APPEARANCES: *Megarry* (*H. C. L. Hanne & Co.*); *Wainstead* (*Zeffertt, Heard & Morley Lawson*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NEGLIGENCE: DEFECTIVE LOADING OF TIMBER

Denny *v.* Supplies & Transport Co., Ltd., and Others

Evershed, M.R., and Jenkins, L.J.
17th May, 1950

Appeal from Southwark County Court.

The plaintiff was a dock labourer employed by the first defendants, wharfingers, at their wharf in the Port of London. The second defendants, Scruttons, Ltd., were stevedores. A steamship which had brought a cargo of timber was unloaded by the defendant stevedores. They placed the timber into barges, which were then towed away to a quay where the defendant wharfingers unloaded the timber and loaded it on to lorries. In the process of taking the timber out of a barge the plaintiff was injured owing to the fact that the timber had been badly loaded in the barge by the stevedores. The plaintiff sued both defendants for damages for breach of statutory duty and negligence. The county court judge dismissed the claim for breach of statutory duty but awarded the plaintiff damages against the stevedores, who now appealed. They contended that they had owed no duty to the plaintiff to use reasonable skill and care in placing the timber in the barge; that his injury was too remote to give him a cause of action against them; that the fact that the timber was badly loaded in the barge was obvious; and that, as he, with full knowledge of the danger, had elected to go on with the work, no duty of care towards him was imposed on them.

EVERSHED, M.R., said that the placing of the timber in the barge by the stevedores was part of one continuous process of getting the timber from the steamer to the shore. There was no break in the chain of causation. The plaintiff was a "neighbour" of the stevedores within Lord Atkin's meaning in *Donoghue* v. *Stevenson* [1932] A.C. 562, at p. 580. The stevedores therefore owed him a duty to take reasonable care to avoid acts or omissions which they could reasonably foresee would be likely to injure him. Knowledge of the risk and opportunity to inspect did not of themselves constitute a *novus actus interveniens*. The work of unloading had to go on, and the plaintiff had no reasonable alternative course open to him although he knew of the danger. The appeal failed.

JENKINS, L.J., agreed.

APPEARANCES: *D. P. Croom-Johnson* (*Gardiner & Co.*); *Reuben* (*Bryan O'Connor & Co.*); *M. R. Nicholas* (*L. Bingham & Co.*) (wharfingers).

[Reported by R. C. CALBURN, Esq., Barrister at Law.]

HIGHWAY: BLIND WOMAN'S FALL INTO MANHOLE

Pritchard *v.* Post Office

Evershed, M.R., Jenkins L.J., and Roxburgh, J.
17th May, 1950

Appeal from Liverpool County Court.

Post Office servants, acting under statutory powers, had opened a manhole in the pavement of a public highway in order to work on telephone wires. They had placed round the hole the usual light wooden guard, which was admitted to afford adequate warning and protection to ordinary persons. The plaintiff was totally blind. As she was walking along the pavement alone, she collided with the guard. It gave way and she fell into the hole and suffered injuries. She claimed damages against the Postmaster-General for nuisance or negligence. The county court judge dismissed the action, holding that no special duty was owed to the plaintiff. She appealed.

EVERSHED, M.R., said that the hole and obstruction in the highway had been created by the Post Office in exercise of their statutory powers under the Telegraph Act, 1863. So long as this work was carried out reasonably and with care the Post Office would not be guilty of nuisance. This matter came back, therefore, to the question: did the Post Office owe a duty to the plaintiff who was blind which they had not discharged? They had been referred to *M'Kibbin* v. *Glasgow Corporation* [1920] S.C. 590. Neither that case nor the other cases cited supported the view that in the circumstances of this case the Post Office had been guilty of negligence. They had taken the steps which they normally took and which were reasonable and proper for guarding and protecting ordinary members of the public, namely persons who could see. The decision of the county court judge was correct. The appeal must be dismissed.

JENKINS, L.J., and ROXBURGH, J., agreed.

APPEARANCES: *G. V. Craine* (*Helder, Roberts, Giles & Co.*, for *John A. Behn, Twyford & Reece*, Liverpool); *Gilbert Paull*, K.C., and *Sellers* (*the Solicitor to the Post Office*).

[Reported by R. C. CALBURN, Esq., Barrister at Law.]

REQUISITIONING: COMPENSATION PAYABLE

Borthwick-Norton and Others *v.* Collier

Evershed, M.R., Somervell and Asquith, L.JJ.
24th May, 1950

Appeal from Hilbery, J. (*ante*, p. 286; 66 T.L.R. 900).

A house was let in 1934 at £150 a year on a lease expiring in 1957. During the second world war it was requisitioned. It was de-requisitioned on 28th February, 1949. On 12th March, 1948, the remainder of the term was assigned. Compensation for damage to the house having become payable by the requisitioning authority under s. 2 (1) (*b*) of the Compensation (Defence) Act, 1939, to the "owner," the tenant-assignee claimed it as such. The landlords claimed to be the "owners." The question who was entitled to receive the compensation was directed by Master Horridge to be tried as an inter-pleader issue. By s. 17 of the Act of 1939 the owner is the person receiving the rack-rent as defined in s. 343 of the Public Health Act, 1936. Rack-rent is there defined as "a rent which is not less than two-thirds of the rent at which the property might reasonably be expected to be let from year to year." The tenant claimed to be entitled to the compensation as "owner," contending that £150 a year was not a rack-rent at values obtaining on 28th February, 1949, and that he alone was in a position to let the house at a rack-rent. Hilbery, J., held that the landlord who received a rack-rent when he granted the lease remained the person receiving it for the purposes of the definition of "owner," and found that in any event £150 a year was, in all the circumstances, still a rack-rent when the house became de-requisitioned. The landlords were therefore entitled to the payment. The tenant appealed.

SOMERVELL, L.J., discussing first a point raised on s. 11 of the Act of 1939, which laid down the time within which a claim must be made, said that a claim did not become barred under that section because it had not within the prescribed period of six months been put forward in the actual name of the "owner." Next, it was argued for the tenant that the landlords had not established that they were the persons receiving the rack-rent, so as to be entitled as "owner" to the sum in issue. The first question on that matter was whether it was sufficient that the rent payable under the lease granted in 1934 amounted to a rack-rent, as defined at that time; or whether it was necessary in each case to consider that matter by reference to the circumstances existing at the date when the requisitioning came to an end. Hilbery, J., had decided, in favour of the landlords, that it was sufficient that the rent was a rack-rent at the date when the lease was granted. He (the lord justice) agreed with him. The second question was whether, even taking the date when the requisitioning ended, the landlords were not in receipt of what amounted to a rack-rent. In considering whether a certain rent was a rack-rent in a matter of this kind, the court must have regard to the premises as they were and also to the restrictive covenants contained in the lease. It could not consider what rent might be obtained if the restrictive covenants did not exist. He agreed with Hilbery, J., in this matter also. Having read the transcript of the evidence, he was of opinion that the landlords had also established that the rent which they were receiving was a rack-rent at the date of the de-requisitioning. It was accordingly they who were entitled as "owner" to the sum in question. The appeal failed.

EVERSHED, M.R., and ASQUITH, L.J., agreed.

APPEARANCES: *Astell Burt* (*Blount, Petre & Co.*); *Sir Shirley Worthington-Evans* (*Trower, Still & Keeling*).

[Reported by R. C. CALBURN, Esq., Barrister at Law.]

MAINTENANCE: WHETHER WIFE TO GO OUT TO WORK

Rose *v.* Rose

Bucknill, Somervell and Denning, L.JJ.
16th June, 1950

Appeal from Willmer, J.

The appellant was granted a decree of divorce on the ground of the respondent's, her husband's, adultery. The registrar made an order in her favour for £4 a week maintenance, free of tax, apart from £1 a week in respect of the infant son of the marriage. Willmer, J., reduced the sum payable to £156 a year, or £3 a week, less tax. The registrar's order for £4 a week, free of tax, amounted to an order for payment of some £375 a year by the husband when tax was added, and it was conceded by the wife that that order could not stand. She sought, on the appeal, an order for £4 a week subject to deduction of tax. No question arose about the £1 a week payable in respect of the child. It was contended that Willmer, J., had erred in principle by arriving at the sum of £156 a year after taking into account a notional earning capacity of the wife. He had treated that earning capacity as though it were actual earnings, and had arrived at the figure of £156 a year by taking the notional earning capacity of the wife as about £100 a year.

SOMERVELL, L.J., said that the question was whether that was a wrong decision in law on the facts of the present case. He did not propose to lay down whether in all or any circumstances the wife's earning capacity was to be brought into the calculation of maintenance in the case of a wife who had not been required to earn any money during the matrimonial life. Such cases must be considered as they arose. *Prima facie*, where during the married life the means of a husband were such that his wife had not been required to go out and earn, it would seem wrong that the husband should be able to say to her that she must now go out and earn, and that he could only pay her a sum based on her doing

so, he having been guilty of adultery and having thereby broken up the married home. That *prima facie* approach seemed plainly right in a case such as this, where the marriage had lasted twenty years, where the wife was forty-one years old, and where a child of four-and-a-half years had to be looked after. The appeal should therefore succeed, and the wife should receive for herself £4 a week, less tax.

BUCKNILL, L.J., agreed.

DENNING, L.J., agreeing, said that a very important consideration in the awarding of maintenance was the conduct of the parties. Here the husband had broken up the matrimonial home after twenty years of married life. No general rule could be laid down in those matters; but the wife was certainly not under any legal duty to go out to work in order to reduce the amount of maintenance for which the husband was liable. She should not be expected to do so, having a young child. If she were a young woman with no child, and should go out to work in her own interest, then her potential earning capacity should be taken into account. On the facts of the present case, however, it clearly should not. Appeal allowed.

APPEARANCES: *F. Donald McIntyre* (*Hepburns*); *Latey*, K.C. (*Gibson & Weldon*, for *Wellington & Clifford*, Gloucester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

PERPETUAL ANNUITIES: VALIDITY: COMMUTATION

***In re* Jones; Midland Bank Executor and Trustee Co., Ltd. *v.* League of Welldoers and Others**

Danckwerts, J. 8th June, 1950

Adjourned summons.

The summons raised a number of questions arising on the will of H. L. J. Jones, who died in 1936, only one of which calls for any report. The testator directed his trustees to pay a number of annuities, either of £25 or £12 10s., to societies and bodies, some of which were obviously charities, and others were not so. Some of these were incorporated, others were non-corporate associations, mostly of a benevolent character. Subject to the payment of these annuities the residue was to be divided as the trustees should think fit among five charities. The testator further declared, though he had not given them any express trust for sale, that his trustees were to have power to postpone conversion of any part of his estate and that on the realisation of his property in Uruguay capital sums stated were to be paid to the annuitants in lieu of their annuities.

DANCKWERTS, J., said that the first question was whether the substituted gift was effective or whether it failed under the rule against perpetuities or for any other reason. It had been impossible to realise the Uruguay estate within the three years the testator thought would be sufficient time. The gift of the capital sums was made on an uncertain event not bound to happen within the time allowed by the rule against perpetuities and therefore it failed. But the annuities were clearly perpetual, and there was no rule of law to prevent a perpetual annuity being given to an unincorporated body, the members of which could dispose of it. Any of the beneficiaries entitled to an annuity could demand payment of a capital sum in cash instead of a sum paid over a period of years, and the value must be ascertained on the principles laid down in *Hicks* v. *Ross* [1891] 3 Ch. 499, followed in *In re Hollins* [1918] 1 Ch. 503.

APPEARANCES: *Eric W. Griffith* (*W. J. McMillin*, Liverpool) for plaintiffs; *G. Maddocks*, *W. Geddes*, *A. O. Hughes*, *G. T. Hesketh*, *Wilfrid Hunt*, *B. B. Benas*, *G. D. Johnston*, *Professor J. Turner* and *Harold Brown* for the various defendants; *Denys Buckley* for the Attorney-General. The following firms of Liverpool solicitors appeared for defendants: *Rutherfords; Sharman & Son; H. W. Stacey and Co.; E. Berry & Co., Laces & Co.; Miller, Taylor and Holmes; Hill, Dickinson & Co.; Lynch & Furlong; H. J. Davis, Berthen & Munro; Forwood, Williams & Co.; Moore & Price; Whitley & Co.; Dodds, Ashcroft & Cook; Nigel Ryland* (Manchester); *P. S. Harvey; Ayrton & Alderson Smith; Yates, Sheridan & Co.; Batesons & Co.* The following London agents represented some of these firms: *Rider, Heaton, Meredith & Mills; S. Thornhill Tracey; Jaques & Co.; Lee & Pembertons; Clare & Clare; J. H. Mote & Son; The Treasury Solicitor.*

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

TRUST TO ACCUMULATE INCOME FREE OF TAX: STATUTORY REDUCTION

***In re* Banbury, deceased; Westminster Bank, Ltd. *v.* Banbury**

Danckwerts, J. 9th June, 1950

Adjourned summons.

The testator, Lord Banbury, by a will made in 1934, settled real and personal estate on protective trusts for a grandson, with estates tail in remainder, and after creating a residuary trust fund directed his trustee for a period of twenty-one years from his death to set aside annually the sum of £1,500 (free of tax) out of the income of the residuary trust fund, and to accumulate the same by investing it and the income thereof by way of compound interest, and to add the accumulations to the capital of the residuary estate, which ultimately went to the tenant in tail of the settled land. The question raised by the summons was whether s. 25 of the Finance Act, 1941, as amended by s. 20 of the Finance Act, 1945, applied to the trust so as to reduce the amount to be invested annually from £1,500, wholly free of tax, to the "appropriate fraction," now 22/29, of that amount.

DANCKWERTS, J., read s. 25, subs. (1), of the Finance Act, 1941, and said that as the date of the will and of the testator's death were both before 1st September, 1939, the provisions of the Act were relevant if applicable to the trust. There was clearly here a periodical payment of a stated amount free of income tax, but no money would be received by any beneficiary until the residuary estate became divisible. It was like the trustees transferring income from one hand to another. It was contended on behalf of the residuary legatees that the case did not come within the Act because there was no "payment." On the other hand counsel for the present Lord Banbury claimed that there was a payment, because sooner or later the fund was to be paid over to somebody who succeeded to the residuary trust fund. The case was one of considerable difficulty, but he had come to the conclusion that a liberal interpretation ought to be given to s. 25, subs. (1), of the Act, especially having regard to the opening words "any provision however worded for the payment . . . of a stated amount free of income tax." He thought therefore that there was a "payment" in the present case, even though it might be a case of the trustees paying to themselves in another account also in their name, and therefore the provision with regard to the reduction of that payment to the fraction appropriate to the current rate of tax of 9s. in the pound applied. The difference between the sum actually set aside, and that which ought to have been set aside, must be made up to the first defendant, the present Lord Banbury.

APPEARANCES: *G. C. D. S. Dunbar* for *R. O. Wilberforce; Wilfrid M. Hunt*, *T. A. C. Burgess* (*Gregory, Rowcliffe & Co.*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

BOMBED BUILDING: COMPULSORY PURCHASE: METHOD OF VALUATION

East End Dwellings Co., Ltd. *v.* Finsbury Borough Council

Devlin, J. 8th May, 1950

Motion to set aside the award of an arbitrator.

Land owned by the claimant company had been the site of a block of working-class dwellings which in June, 1944, were

completely demolished by enemy action. Before that date the houses had been let to weekly tenants at rents controlled by the Rent Restriction Acts. The houses had not been rebuilt when the respondent borough council made a compulsory purchase order which was confirmed by the Minister of Health. On 28th July, 1948, the borough council served a notice to treat on the company. In May, 1949, the War Damage Commission decided that they would make a payment of cost of works in respect of the damage. The arbitrator assessed at £32,000 the compensation payable in respect of the land on the assumption that, if the whole of the war damage had been made good before the date of the notice to treat, the rents legally recoverable in respect of the houses would not be subject to the limits imposed by the Rent Restriction Acts. By s. 53 (1) of the Town and Country Planning Act, 1947, where land has suffered war damage which has not been made good at the date of the notice to treat and a payment of cost of works would be the appropriate payment under the War Damage Act, 1943, " (*a*) the value of the interest for the purposes of the compensation payable in respect of the compulsory purchase shall . . . be taken to be the value which it would have if the whole of the damage had been made good before the date of the notice to treat."

DEVLIN, J., said that the principle in *Ellis and Sons Amalgamated Properties, Ltd.* v. *Sisman* [1948] 1 K.B. 653; 91 SOL. J. 692, appeared to cover the situation. Had the houses been rebuilt, they would have been different buildings from those destroyed, and no one of the old statutory tenants would have had the right to say that his statutory tenancy continued. As the buildings would be new, the identical landlord could, under the Rent Restriction Acts, let at new rents. The Landlord and Tenant (Rent Control) Act, 1949, might operate to reduce the rents, but it was agreed that they would be higher than those of 1939 which applied to the old houses. The arbitrator had to determine whether, by s. 53 (1) (*a*) of the Town and Country Planning Act, 1947, the value of the houses notionally rebuilt was to be put on the basis of 1939 rents, or on those which the landlord would in fact be able to charge. He had proceeded on the latter assumption, and in his (his lordship's) view had, in so doing, made no error of law. Mr. Lawrence had argued that the words " made good " in s. 53 (1) (*a*) meant repairing and were consistent only with the idea that the houses retained their identity. He (his lordship) did not assent to that view. Once one postulated that the houses were completely demolished, it seemed to follow that the only " making good " which could be effected was rebuilding in the old form. The words were not inconsistent with reinstatement in that way, and were so used in s. 8 (2) of the War Damage Act, 1943. The arbitrator was right and had made no error of law. Motion dismissed.

APPEARANCES: *Geoffrey Lawrence*, K.C. (*John E. Fishwick*); *Rowe*, K.C., and *Squibb* (*George C. Carter & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister at Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time :—

Coal Mining (Subsidence) Bill [H.C.] [26th May.
Food and Drugs (Milk, Dairies and Artificial Cream) Bill [H.L.] [15th June.
To consolidate certain enactments relating to milk, dairies and artificial cream.
Foreign Compensation Bill [H.C.] [26th May.
Highways (Provision of Cattle-Grids) Bill [H.C.] [26th May.
Oldham Extension Bill [H.C.] [15th June.
Sunderland Extension Bill [H.C.] [14th June.
Thames Conservancy Bill [H.C.] [26th May.

Read Second Time :—

Adoption Bill [H.L.] [13th June.
To consolidate the enactments relating to the adoption of children with such corrections and improvements as may be authorised under the Consolidation of Enactments (Procedure) Act, 1949.
Allotments (Scotland) Bill [H.L.] [15th June.
Bootle Extension Bill [H.C.] [15th June.
Bristol Corporation Bill [H.C.] [15th June.
Distribution of Industry Bill [H.C.] [13th June.
Eton Rural District Council Bill (H.C.) [14th June.
International Organisations (Immunities and Privileges) Bill [H.L.] [13th June.
To consolidate the Diplomatic Privileges (Extension) Acts, 1944-1950.
London County Council (General Powers) Bill [H.C.) [15th June.
London County Council (Money) Bill [H.C.] [15th June.
Manchester Corporation Bill [H.C.] [15th June.
Manchester Ship Canal Bill [H.C.] [15th June.
Matrimonial Causes Bill [H.L.] [13th June.
To consolidate certain enactments relating to matrimonial causes in the High Court in England and to declarations of legitimacy and of validity of marriage and of British nationality, with such corrections and improvements as may be authorised by the Consolidation of Enactments (Procedure) Act, 1949.
Merchant Shipping Bill [H.C.] [13th June.
Mid-Southern Utility Bill [H.C.] [15th June.
Ministry of Health Provisional Order (Colne Valley Sewerage Board) Bill [H.C.] [15th June.
Ministry of Health Provisional Order (South-West Middlesex Crematorium Board) Bill [H.C.] [15th June.
Port of London Bill [H.C.] [15th June.
Royal Patriotic Fund Corporation Bill [H.C.] [15th June.

Read Third Time :—

Derby Corporation Bill [H.L.] [13th June.
Dover Corporation Bill [H.L.] [14th June.
Dover Harbour Bill [H.L.] [13th June.
Gloucester Extension Bill [H.L.] [13th June.
Plymouth Extension Bill [H.L.] [13th June.
South Staffordshire Water Bill [H.C.] [13th June.
Wisbech Corporation Bill [H.L.] [13th June.

In Committee :—

Public Utilities (Street Works) Bill [H.C.] [15th June.

B. DEBATES

Moving the Second Reading of the **Adoption Bill**, the LORD CHANCELLOR said the Bill sought to consolidate the law relating to the adoption of children contained in the Act of 1926, the Act of 1939 relating to adoption societies, and the Private Member's Act passed in 1949. At the same time it was proposed to make one or two minor amendments in the law by means of the procedure laid down in the Consolidation of Enactments (Procedure) Act, 1949. The chief of these amendments dealt with a provision in the 1949 Act to the effect that the consent of any person to the making of an adoption order might be given without his knowing the identity of the applicant for the order. The Act provided that if the person whose consent was required did not attend in court for the purpose of giving his consent, a document signifying consent should be sufficient, " if the person is named or otherwise described in the document."

In the rules made under this Act the device adopted to give effect to these provisions was this: If the person applying for an adoption order wished to conceal his identity he could ask the court to allot to him a serial number for the purposes of the application, and the parent's consent to the adoption, which had to be attached to the application, identified the applicant only by reference to the serial number. Doubts had, however, been expressed in the Chancery Division as to whether a serial number was sufficient description of the applicant to satisfy the provisions of the 1949 Act. The opportunity was therefore being taken in the present Bill to make the matter clear beyond doubt by a slight alteration in the form of words used. Instead

of the consent having to "name or otherwise describe" the applicant for the adoption order, the Bill now provided that the consent might be given in favour of a person who was "named" in the document, or (where his identity was not known to the consenting party) who was "distinguished" therein in the manner prescribed by the rules. [13th June.

Moving the Second Reading of the **Matrimonial Causes Bill,** the LORD CHANCELLOR stated that the Bill would consolidate the law relating to divorce and other matrimonial causes which was at present contained in the Supreme Court of Judicature (Consolidation) Act, 1925; the Matrimonial Causes Act, 1937, and the Law Reform (Miscellaneous Provisions) Act, 1949. The 1925 Act dealt mainly with the constitution and procedure of the Supreme Court and was not the place in which one would expect to find the substantive law dealing with a subject such as divorce or nullity of marriage. The Bill also contained certain minor amendments of the law which it was intended to make under the provisions of the Consolidation of Enactments (Procedure) Act, but he did not propose to expound these amendments, which were fully set out in the memorandum to the Bill, at that stage. [13th June.

C. QUESTIONS

VISCOUNT BUCKMASTER asked whether the Government would correct the statement made on 10th May, 1950, to the effect that, where houses were rent-restricted before September, 1949, there had in some cases been an allowance of up to 40 per cent., and in other cases up to 48 per cent. for the purpose of repairs. In reply LORD KERSHAW said he had inadvertently referred to 1949 instead of 1939. Houses controlled before 1939 were those which had been continuously controlled since 1920 on the basis of rents in force in and before 1914, or in certain cases 1920, or, having become decontrolled, were again controlled. The Rent Restriction Acts authorised increases of 15 per cent. of the net rent and a further 25 per cent. where the landlord was entirely responsible for the repairs. Taken together, these increases were known as "the 40 per cent. increase." The 1920 Act also authorised two further increases—namely, the amount of any increase in the rates payable by the landlord, and 8 per cent. of the capital cost of any improvements or structural alterations. These two latter increases could also be made in the rents of houses brought under control in September, 1939, but no increase had been authorised for such houses corresponding to the 40 per cent. increase for 1920-Act controlled houses. This matter was engaging the Government's attention, but there was no prospect of early legislation. [13th June.

In reply to a question by VISCOUNT TEMPLEWOOD, the LORD CHANCELLOR stated that under the Justices of the Peace Act, 1949 (Date of Commencement) Order, 1950, Pt. I of the Act, except s. 8, Pt. V, except two subsections of s. 29, subs. (2) to (8) of s. 11, ss. 14, 20, 37, 39, 40, 41, 43, 44, s. 46 except part of subs. (3) (*a*), Sched. I and parts of Scheds. VI and VII came into force on 1st June; and s. 13 and a further part of Sched. VII were to come into force on 1st January, 1951. No date had yet been fixed for bringing into force the remaining provisions, including the provisions relating to the setting up of magistrates' courts committees. Rules had been made under s. 4 of the Act to come into force on 1st June—the Justices (Supplemental List) Rules, 1950 (S.I. No. 594), and the Justices (Lancashire Retired List) Rules, 1950 (S.I. No. 567). Lord Jowitt contemplated that rules would be made under s. 13 to come into force on 1st January next. He had extended to 16th April, 1950, the period during which boroughs could apply under s. 10 (5) (*a*) of the Act for the saving of their commissions and quarter sessions, and he had these applications under consideration. [13th June.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Cinematograph Film Production (Special Loans) Bill [H.C.] [15th June.

To amend the Cinematograph Film Production (Special Loans) Act, 1949, as respects the permitted maximum aggregate amount of principal outstanding in respect of advances made by the Board of Trade to the National Film Finance Corporation.

Pier and Harbour Provisional Order (Caernarvon) Bill [H.C.] [14th June.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Caernarvon.

Pier and Harbour Provisional Order (Cattewater) Bill [H.C.] [14th June.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Cattewater.

Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [14th June.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Great Yarmouth.

Pier and Harbour Provisional Order (Workington) Bill [H.C.] [14th June.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Workington.

Read Second Time:—

Gateshead and District Tramways Bill [H.L.] [13th June.
Leyton Corporation Bill [H.L.] [13th June.
London County Council (Woolwich Subsidences) Bill [H.L.] [13th June.
Pier and Harbour Provisional Order (Hartlepool) Bill [H.C.] [14th June.
Runcorn-Widnes Bridge Bill [H.L.] [13th June.

Read Third Time:—

Ilford Corporation (Drainage) Bill [H.C.] [16th June.
Ipswich Dock Bill [H.C.] [16th June.

In Committee:—

Finance Bill [H.C.] [15th June.

B. DEBATES

On the motion for the adjournment, Mr. HOLLIS raised certain questions with regard to approved schools. From time to time juveniles in these schools broke out and made nuisances of themselves in the neighbourhood, and the headmasters complained that before the 1933 Act, and also to some extent before the Criminal Justice Act, 1948, they had been able to recommend that boys who absconded should be sent to Borstal, but by Home Office circular the headmaster was no longer allowed to make these recommendations. He would like to know whether this power could not be restored or some alternative power provided.

Mr. Hollis also desired to know what provision was made for the care of these juveniles after they had been discharged from the approved schools.

In reply, Mr. GEOFFREY DE FREITAS said it was true that the managers of approved schools now had to get the approval of the Home Secretary before bringing a boy before a court on a charge of absconding. This was the effect of Sched. IX to the Criminal Justice Act, 1948. Previously, under the Children and Young Persons Act, 1933, managers of approved schools could bring an absconder before the court on their own initiative, and the court could either send him back to the school with an increased period of detention up to six months, or send him to Borstal if he were over sixteen. Some managers seized this opportunity of getting rid of a difficult boy. Under the 1948 Act the power to send to Borstal remained but proceedings could only be taken with the Home Secretary's approval. With regard to after-care, the 1933 Act gave managers power of supervision over boys and girls if under fifteen until eighteen, if over fifteen until twenty-one. Furthermore, the Children's Officer of the local authority in some cases acted as a guide and a friend to the boy released from an approved school. [14th June.

C. QUESTIONS

TOWN AND COUNTRY PLANNING

The Minister of Town and Country Planning (Mr. HUGH DALTON) stated that notice that they would be able to recover professional expenses from the Central Land Board had not been sent out to recipients of Form L.39 (*ante*, p. 372) because it was not desired to encourage small people to incur expenses which they would not, in the great majority of cases, be able to recover from the Board. He was, however, considering whether it would be useful to issue further information.

In reply to further questions by Sir JOHN MELLOR and others, Mr. DALTON said it was well known that in the great majority of these cases expenses would not be recoverable because the claimants would not be successful in claiming compensation

for loss of development value, their only possible development being within the 10 per cent. free tolerance. He would, however, consider whether the suggestion which had been made could usefully be met. [13th June.

Mr. DEREK WALKER-SMITH asked (1) whether the Minister had considered the proposals of the Royal Institute of Chartered Surveyors for payment in full of Pt. VI claims under the Town and Country Planning Act, 1947, in accordance with a scheme for deferred payment certificates explained in the memorandum of the Royal Institution, and what decision he had reached; (2) whether he would now issue legislation giving power to prescribe by regulation procedure for the settlement by the Lands Tribunal of disputes arising out of the determination of development charges. In reply, Mr. DALTON said both these proposals were debatable, and would require legislation which was not practicable in the present session. Mr. Dalton said that according to his information (13th June) the procedure of s. 17 of the Town and Country Planning Act, 1947, was working reasonably well in deciding whether operations and changes of use required planning permission. Although questions under s. 17 involved interpretation of law, the authorities often got on more quickly by consulting the local authorities, because they were the planning authorities, than by elaborate legal inquiries. On the whole the local authorities applied common sense to these problems. If the member could give any evidence that the procedure was not working well, he would look into it. [13th June.

Mr. W. J. TAYLOR asked the Chancellor of the Exchequer (1) if he would consider making interim payments off claims for loss of development value under s. 58 of the 1947 Act; (2) if he would instruct the Central Land Board to notify claimants under that section as soon as possible of the amount which it was proposed to pay against their claims. Sir STAFFORD CRIPPS replied that payments to be made under s. 58 depended on a scheme to be drawn up by the Treasury and submitted to Parliament for its approval. The scheme could not be drawn up until the development value of the bulk of the claims had been ascertained, and hence no announcement could be made as to the amounts of the proposed payments. This also precluded the possibility of making interim payments in advance of the scheme itself, and the Act itself contained no provision authorising the making of such payments. [13th June.

Mr. J. GRIMSTON asked why the Estate Duty Office, in assessing death duties, counted as an asset of a deceased person's estate the full amount of his claim against the Central Land Board Fund of £300,000,000, but would not give an assurance that the appropriate estate duty would be refunded if the claim was not met in full. Mr. DOUGLAS JAY stated that under Pt. VI of the Town and Country Planning Act, 1947, claims for loss of development value were regarded as property of which the amount or value was not known at death. Under s. 6 (3) of the Finance Act, 1894, satisfaction of the duty was deferred until the amount was known. [15th June.

MISCELLANEOUS

Mr. CHUTER EDE said that, under a statute applying to London, power already existed for a magistrate to direct that a dog which had bitten or attempted to bite any person within the Metropolis should be destroyed, and for the police to carry out the order of the court. He could hold out no prospect of legislation in the near future to amend the Dog Acts so as to enable this to be done generally. In the Metropolis, a dog was not allowed a first bite before being regarded as dangerous. With reference to a case referred to by Mr. ERIC FLETCHER in which an owner had twice been imprisoned for failure to destroy a dog which the magistrates had ordered to be destroyed, but which the police said they had no power to destroy, he understood that the authorities concerned were waiting for the time for appeal under the present order for the dog's destruction to expire, when the dog would be destroyed. He agreed that the owners of dogs did from time to time appeal successfully against magistrates' orders for their dog's destruction. [15th June.

Mr. CHUTER EDE stated that Mr. D. J. Corcoran had been in custody for contempt of court since 12th February, 1949. The fact that, if he tried to purge his contempt by complying with the English court's decision he would then be flouting a diametrically opposed decision of the Dublin Supreme Court, was no responsibility of the Home Secretary's. This was not a case which could be dealt with under the Prerogative. If the man would make his apologies to the court it would, he thought, be worth while seeing what would happen. [15th June.

Mr. BEVAN stated that he had no power to enforce the law with regard to the charging of premiums or key-money in respect of the letting of empty premises. Local authorities, however, had power to institute proceedings under the Rent Restriction Acts and he had recently reminded them of their powers. They were already exercising such powers in a number of areas, and he hoped that they would be vigilant and would exercise their powers when they were invoked. [15th June.

Mr. CHUTER EDE said that there were no regulations permitting the temporary release of persons serving sentences in prison for the purpose of giving evidence personally in legal proceedings in a foreign country. [15th June.

STATUTORY INSTRUMENTS

Agricultural Contractors (Revocation) (Scotland) Order, 1950. (S.I. 1950 No. 921.)

Carpets (Maximum Prices) (Amendment) Order, 1950. (S.I. 1950 No. 916.)

Coal Industry Nationalisation (Options) (Amendment) Regulations, 1950. (S.I. 1950 No. 931.)

County of Cambridge (Electoral Divisions) Order, 1950. (S.I. 1950 No. 922.)

Fertilisers (Prices) (Amendment No. 4) Order, 1950. (S.I. 1950 No. 919.)

Food (Licensing of Wholesalers) (Amendment) Order, 1950. (S.I. 1950 No. 913.)

Food Substitutes (Revocation) Order, 1950. (S.I. 1950 No. 929.)

Gas (Conversion Date) (No. 17) Order, 1950. (S.I. 1950 No. 933.)

General Nursing Council for Scotland (Amendment) Rules, 1950. (S.I. 1950 No. 941.)

General Nursing Council for Scotland (Amendment) (No. 2) Rules, 1950. (S.I. 1950 No. 943.)

Imported Carpets (Maximum Prices) (No. 3) Order, 1950. (S.I. 1950 No. 917.)

Ironstone and Shale Mines (Locomotives) General Regulations, 1950. (S.I. 1950 No. 923.)

National Assistance (Charges for Accommodation) (Scotland) Regulations, 1950. (S.I. 1950 No. 940.)

Police (Scotland) (Amendment) Regulations, 1950. (S.I. 1950 No. 951.)

Police (Women) (Scotland) (Amendment) Regulations, 1950. (S.I. 1950 No. 950.)

Potatoes (General Provisions) (Amendment) Order, 1950. (S.I. 1950 No. 930.)

Retail Newsagency, Tobacco and Confectionery Trades Wages Council (England and Wales) Wages Regulation Order, 1950. (S.I. 1950 No. 927.)

Retail Newsagency, Tobacco and Confectionery Trades Wages Council (Scotland) Wages Regulation Order, 1950 (S.I. 1950 No. 937.)

Schools (Scotland) Code, 1950. (S.I. 1950 No. 915.)

Stopping up of Highways (Durham) (No. 3) Order, 1950. (S.I. 1950 No. 936.)

Stopping up of Highways (Lancashire) (No. 5) Order, 1950. (S.I. 1950 No. 924.)

Stopping up of Highways (Lancashire) (No. 6) Order, 1950. (S.I. 1950 No. 936.)

Stopping up of Highways (Warwickshire) (No. 2) Order, 1950. (S.I. 1950 No. 932.)

Superannuation (Control Service for Germany and Austria—Unestablished Civilian Service) (Amendment No. 2) Regulations, 1950. (S.I. 1950 No. 945.)

Superannuation (Control Service for Germany and Austria—Unestablished Civilian Service) (Compensation to Reversionary Members of Home Police Forces) Regulations, 1950. (S.I. 1950 No. 920.)

Superannuation (Service in Places Abroad) Order, 1950. (S.I. 1950 No. 948.)

Town and Country Planning (General Development) (Scotland) Order, 1950. (S.I. 1950 No. 942.)

Utility Apparel (Industrial Overalls and Merchant Navy Uniforms) (Manufacture and Supply) (Amendment) Order, 1950. (S.I. 1950 No. 918.)

Ware Potatoes (Amendment No. 2) Order, 1950. (S.I. 1950 No. 930.)

Water (Adaptation and Modification of the Local Government (Scotland) Act, 1947) Amendment (Scotland) Regulations, 1950. (S.I. 1950 No. 947.)

NOTES AND NEWS

Professional Announcement

LAURANCE HAVELOCK COLLINS and ROBERT ELLISON FEARNLEY-WHITTINGSTALL, Solicitors, practising as LAURANCE COLLINS & FEARNLEY-WHITTINGSTALL, at Sardinia House, 52 Lincoln's Inn Fields, London, W.C.2, and MAUDE and TUNNICLIFFE, at Sardinia House, 52 Lincoln's Inn Fields, London, W.C.2, and SIDNEY SMITH, SON & LEEFE, at Bank Chambers, 42 Kilburn High Road, London, N.W.6, have taken into partnership GEORGE ALEXANDER DODSWORTH, as from the 1st March, 1950. The names and addresses of the above firms remain unchanged.

Honours and Appointments

The King has been pleased, on the recommendation of the Lord Chancellor, to approve the appointment of RICHARD MICHAEL ARTHUR CHETWYND TALBOT, Esq., to be deputy chairman of the Court of Quarter Sessions of the County of Salop.

The Lord Chancellor has decided to appoint Mr. REGINALD CLARK, K.C., Mr. ARTHUR JOHN HODGSON, and Mr. JOHN ALEXANDER REID, M.C., to be Judges of County Courts, with effect from 19th June.

Judge Drucquer retired from the County Court Bench on 18th June, and the Lord Chancellor has made the following arrangements: Judge DALE and Judge BLAGDEN to be the Judges of Circuit 44 (Westminster and Aylesbury); Judge ALUN PUGH to be Judge of Circuit 42 (Bloomsbury); Judge DONE, M.C., to be Judge of Circuit 41 (Clerkenwell); Judge ANDREW, M.B.E., to be Judge of Circuit 40 (Bow); Judge MACMILLAN to be one of the Judges of Circuit 38 (Edmonton, etc.); Mr. CLARK to be one of the Judges of Circuit 58 (Ilford, etc.); Mr. HODGSON to be one of the Judges of Circuit 45 (Wandsworth and Kingston); and Mr. REID to be one of the Judges of Circuit 37 (West London, etc.) and additional Judge at Bow and Marylebone County Courts.

The Lord Chancellor has appointed Mr. BERTRAM HARRY BONNIFACE to be the Registrar of Folkstone, Deal and Dover County Court and District Registrar in the District Registry of the High Court of Justice in Dover as from the 20th June, 1950, in place of Mr. E. T. Lambert who has retired.

In addition to the names mentioned in the Birthday Legal Honours in last week's issue (*ante*, p. 389), we have received notification of the following: Mr. MARTIN SPENCER HILL, secretary, General Council of British Shipping, British Liner Committee and Liverpool Steamship Owners' Association, is awarded the C.B.E. He was admitted in 1919. Lieutenant (A) R. I. M. SCOTT, R.N.V.R., receives the O.B.E. He was admitted in 1947.

County Alderman Sir BERNHARD LOMAS-WALKER, solicitor, of St. Albans, Harrogate, has been awarded by the Portugese Government the honour of Chevalier of the Order of Christ in recognition of nearly forty years' service as vice-consul of Portugal in Leeds.

Mr. J. E. GREENWOOD, of the town clerk's department, Huddersfield, has been appointed assistant solicitor to Dewsbury Corporation.

Mr. M. L. DIX HAMILTON has been appointed deputy resident solicitor to the National Provincial Bank.

Mr. R. D. W. MAXWELL, senior legal assistant to Holborn Borough Council, has been appointed assistant solicitor to the council.

The Board of Trade have appointed Mr. ALEXANDER LAUDER MEDCALF to be inspector of official receivers attached to the office of the Inspector General in Bankruptcy (London) with effect from 1st May, 1950.

The Colonial Office announces the following appointments in the Colonial Legal Service: Mr. M. J. ABBOTT, Crown Counsel, Hong Kong (recently serving as President of the High Court, Ethiopia), to be Puisne Judge, Nigeria; Mr. F. G. ADAMSON, Assistant Commissioner of Lands, Gold Coast, to be Registrar of Titles, Department of Lands, Kenya; Mr. A. M. I. AUSTIN, Administrative Cadet, Federation of Malaya, to be Legal Officer, Federation of Malaya; Mr. D. H. SHACKLES, Chief Registrar, Supreme Court, Gold Coast, to be Public Trustee and Official Administrator, Federation of Malaya; Mr. H. W. WILSON, Attorney-General, Trinidad, to be Puisne Judge, Malaya; Mr T. R. PENNY, to be Registrar of Titles, Kenya; and Mr. M. J. C. SAUNDERS, to be Assistant Commissioner of Lands, Gold Coast.

Personal Notes

Councillor G. S. Field, solicitor, of The Forbury, Reading, has been appointed vice-chairman of the education committee and chairman of the civil defence committee of the Reading Town Council.

Mr. B. R. Ostler, deputy town clerk of Harrogate, received a presentation on Wednesday, 14th June, from his colleagues in the town clerk's department on his departure to take up the post of clerk and solicitor to the Friern Barnet Urban Council, Middlesex.

Mr. G. L. Talbot, solicitor, of Great Yarmouth, was married on 1st June to Miss Pamela Hildyard, of Lowestoft.

Miscellaneous

The next quarter sessions for the borough of Stamford will be held on Wednesday, 26th July, at 11.30 a.m.

TRANSPORT ARBITRATION TRIBUNAL

The Tribunal has issued a direction that counsel and solicitors appearing on behalf of a party at public sittings of the Tribunal will be required to robe.

J. A. ARMSTRONG,
Clerk to the Transport Arbitration Tribunal.

THE SOLICITORS ACTS, 1932 TO 1941

On the 9th day of June, 1950, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of DOUGLAS GEORGE VERNEY, formerly of No. 21 Victoria Avenue, Southend-on-Sea, in the County of Essex, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

Wills and Bequests

Mr. Edwin Tofield, retired solicitor, of Sheffield, left £11,290 (£10,279 net).

Sir Richard H. Armstrong, solicitor, late Pro-Chancellor of Liverpool University, left £54,959 (£54,643 net).

SOCIETIES

CHANGE OF ADDRESS

Please take notice that on Friday, 30th June, 1950, the UNITED LAW CLERKS' SOCIETY and the SOLICITORS' CLERKS' PENSION FUND is removing from Maxwell House, Arundel Street, London, W.C.2, to 2 Stone Buildings, Lincoln's Inn, London, W.C.2.

The annual meeting of the BERKS, BUCKS AND OXON INCORPORATED LAW SOCIETY was held at the Caversham Bridge Hotel, Reading on 1st June. It was preceded by a luncheon, at which the guests included His Honour Judge Donald Hurst, and Mr. B. Chilton, the Registrar of the Reading County Court. It was with regret that the meeting heard that Mr. Nevil Smart, President of The Law Society, had been taken ill and was unable to attend.

The following officers of the Society were elected: President, Mr. P. R. Darby (Oxford); Vice-President, Mr. C. M. R. Peecock (Slough); Secretary and Treasurer, Mr. E. H. Duce (Reading).

Congratulations were extended to Mr. Arthur F. Clark upon his being elected Mayor of Reading in succession to another solicitor, Col. Geoffrey S. Field, and to Mr. J. B. Maudsley, on his election as Mayor of Maidenhead. The meeting welcomed Mr. Seton Pollock, who had been appointed area secretary under the Legal Aid and Advice Act, 1949.

At the annual general meeting of the SOMERSET LAW SOCIETY, at Wells, the following officers were elected: President, Mr. M. Pulliblank (Wells); Vice-President, Mr. E. W. Powell (Weston);

Hon. Secretary and Treasurer, Mr. Rex Williams (Taunton). Members expressed sincere appreciation of the many years of hard work done on their behalf by the late Hon. Secretary and Treasurer, Colonel Geoffrey P. Clarke, who died last December. Colonel Clarke had been hon. secretary and treasurer for twenty-one years.

The annual meeting of the SOLICITORS' CLERKS' PENSION FUND is being held at The Law Society's Hall, Chancery Lane, London, on Thursday, 29th June, 1950. The committee of management has circulated its report and the accounts for 1949, and also the actuarial report on the quinquennial valuation. The fund is making progress. The annual report shows that 786 firms of solicitors are contributing with 2,299 of their clerks for pensions of varying amounts payable on reaching age 65 (men) and age 60 (women). The pensions in payment number 37, whilst 90 other members, having ceased contributory employment, have elected to receive deferred pensions. Investments held amount to £533,978, at cost. The valuation report shows the fund to be in a sound position. The valuation discloses that assets exceed liabilities by £67,679. The larger part of this surplus is being used to set up an investment and contingencies reserve fund. Persons desiring to receive information should write to the Secretary, at Maxwell House, Arundel Street, London, W.C.2, or after 30th June at 2 Stone Buildings, Lincoln's Inn, W.C.2.

During the course of his presidential address at the annual general meeting of the SOLICITORS' MANAGING CLERKS' ASSOCIATION, held at The Law Society's Court Room, 60 Carey Street, London, W.C.2, on Wednesday, 24th May, 1950, the President, Mr. Sidney J. Fogden, announced with satisfaction that 380 new members had joined in the year under review, and added that there was still room for yet bigger increases in membership. Classes for junior students had continued successfully. The Inns of Court Lectures which had been a feature of the Association for a number of years had continued, thanks to the assistance afforded by the Benchers of the various Inns for making available to the Association the use of the halls for this purpose and also to the various members of the Bar who had contributed lectures. The Library, of which the Association was very proud, continued to grow and new books were constantly being added. The President then referred to the high spot in the year, indeed in the whole existence of the Association, which was the introduction of the scheme for examinations and certification of managing clerks, which scheme had successfully been launched under the auspices of the Joint Committee of The Law Society and the Solicitors' Managing Clerks' Association. He said this scheme, if operated successfully, besides putting the Association " on the map," would do much to establish solicitors' managing clerks as a recognised section of the legal community. The first examinations under the scheme had already been held. In reviewing the social activities of the Association the President said that a rather curious position had arisen, that of having two annual dinners in one year, the first of which was held on 14th January, 1949, instead of the preceding autumn. The Association had now reverted to the old practice of holding the annual dinner in November of each year. The Lord Chief Justice of England had been principal guest of the Association at the first annual dinner held in 1949, and at the second annual dinner Lord Greene accompanied by Lady Greene had been principal guest and numerous legal notabilities had attended these functions. Mr. Fogden recalled that in his capacity as President he had the honour of being invited to the annual dinner given by the Council of The Law Society. The Association's other social activities for its members had included a smoking concert and river outing. The Association's policy of forming provincial branches was being successfully pursued. Besides the older branches of Bournemouth and Southampton, a new branch at Manchester had been formed. It was hoped shortly to report a new branch at Birmingham and plans were going ahead to establish a still further branch in the West Country.

The report and accounts were adopted.

The meeting unanimously approved a motion electing Mr. F. T. Adams President of the Association for the ensuing year. Mr. Adams was well known to the members for his work as honorary Social Secretary. He was prominent in local government affairs and a former association football referee.

Resolutions restoring the subscriptions to the rates prevailing before the late war, namely, London members £1 1s. per annum and country members, 10s. 6d. per annum, such increases to be operative on the 1st January, 1951, were approved, and a special resolution was passed to enable members to continue serving on the council of the Association on attaining the age of 70.

The retiring President, Mr. Sidney J. Fogden, and Mr. A. E. Read the former honorary Secretary of the Bournemouth Branch of the Association were unanimously elected Vice-Presidents.

Messrs. Peat, Marwick, Mitchell & Co., were re-elected as honorary Auditors of the Association and thanks were extended to them for their work, as also to The Law Society for permitting the use of their Court Room for the meeting.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Legal Education

Sir,—In " Current Topics " in your issue for 10th June last, under the heading: " Nottingham Incorporated Law Society," Mr. W. S. Rothera is reported as having said that The Law Society had suggested the abolition of provincial law schools. Lest there should be any misunderstanding upon this score I wish to make it clear that no such suggestion or proposal has in fact been made by the Council of The Law Society. The Council have at present under consideration a substantial increase in the number of hours attendance at an approved law school which shall constitute the statutory year of legal education as required by s. 32 of the Solicitors Act, 1932. In this connection the Council are in close touch with the Committee of Heads of the Approved Law Schools which was recently set up by the Council; no changes are contemplated save with the substantial support of that committee.

T. G. LUND,
Secretary, The Law Society.

Chancery Lane, W.C.2.

PRINCIPAL ARTICLES APPEARING IN VOL. 94

8th April to 24th June, 1950

For list of principal articles up to and including 1st April, see, ante, *p.* 230

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